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THE UNIVERSITY OF ALBERTA

"THE FALL OF FRANCIS BACON"

by

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A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE

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FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled "The Fall of Francis Bacon", submitted by John L. Nicholls in partial fulfillment of the requirements for the degree of Master of Arts.

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ABSTRACT

The Parliament of 1621 succeeded in bringing down the Lord Chancellor, Francis Bacon, on charges of judicial corruption. Much has been written about the political background to this remarkable event but most often in terms of personalities and Parliament. The wider themes raised by the complaints against the Chancellor in the Commons' committees of the whole for grievances and for the courts form the basis of this study; it is only in the context of these complaints that the dimensions of the political crisis in the 1621 Parliament are comprehensible. Under attack were the royal patents of monopoly of privilege, for which Bacon, as a leading referee and the man at the seal, assumed responsibility; and the court of Chancery, of which he was theoretically sole judge. In both cases, fundamental administrative weaknesses inherent in Jacobean government proved his undoing. The issues raised are all-embracing, but Bacon's Chancellorship provides a useful focus.

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AUTHOR'S NOTE

In view of the diversity of sources, it has been thought best to modernise the spelling in quotations and to expand contractions. Seventeenth century excesses in punctuation have been curtailed so as to preserve the sense of the original.

For dates, the Julian calendar is retained, while the beginning of the year is taken as 1 January.

INTRODUCTION

In a remarkable coup, the Parliament of 1621 succeeded in toppling the Lord Chancellor, Francis Bacon, on charges of judicial corruption. The case, which had the most dramatic legal and political implications, undoubtedly marked a turning-point in the line of constitutional confrontations in the early Stuart period. A recent study of the mechanics of parliamentary judicature in the 1620's has pointed to the pioneering work of the House of Commons in 1621 in reviving medieval process.[1] The proceedings against the king's first minister were extraordinary; still more extraordinary was James I's concurrence in them. For his part, Bacon might reasonably have expected the protection of the king, yet in the end he was delivered up to the wrath of Parliament without demur and forced to pay the price. It was not simply a question of the integrity of the bench. What was at issue was the Crown's credibility with Parliament at a moment of acute financial embarrassment. Chronic insolvency and the prospect of costly intervention in the Palatinate obliged James I to take seriously the principle of "redress of grievances". To some extent, Bacon was a victim of these circumstances.

Apart from religion, the two questions which most exercised Parliament in 1621 were abuses of the royal patronage and abuses in the court of Chancery. In both cases, the Lord Chancellor found himself at the centre of controversy. When the allegations of bribery first surfaced in the Commons' committee of the whole for the courts on 14 March,[2] Bacon was still reeling from the disclosure to a parliamentary conference

that he personally had certified the legality and convenience of some of the most obnoxious patents of monopoly and privilege.[3] Moreover, the committee had just concluded an angry hearing into his practice of granting bills of conformity to debtors in the court of Chancery.[4] The Lord Chancellor, then, was already a marked man when the petitions of two disgruntled litigants charged that money had been passed to him for the expedition of suits in Chancery. The evidence, while scarcely overwhelming, was an unexpected windfall for his political enemies, and Bacon hastily appealed to the king and the royal favourite, Buckingham, to "put an end to these miseries one way or other".[5] But the momentum of reform--the legacy of the long period without Parliament--was not to be checked so easily. For the time being, it was expedient that James I give the Commons its head: Bacon proved expendable.

The Chancellor's rise to power had been a slow and frustrating process for a man of recognized intellectual superiority. His disappointments illustrate the high price of political isolation for a royal servant. In the 1590's, finding his talents undervalued by the late-Elizabethan Establishment dominated by his uncle, Lord Treasurer Burghley, Bacon had thrown in his lot with the faction of the favourite, Essex. It was an ill-fated affiliation. In the face of the unrelenting skepticism of the queen, the promised advancement to a place in the government never materialized. Bacon eventually was forced to disavow his patron, whose disgrace and abortive rebellion in 1601 confirmed Elizabeth's worst fears. Even the advent of James I and a new régime could not entirely dispel the

cloud over Bacon's career; toiling in the shadow of the redoubtable Edward Coke, it was not until 1607 that he was made Solicitor General. Finally in 1613 he rose to the Attorney Generalship, and in alliance with the Lord Chancellor, Ellesmere, was instrumental in outflanking Coke's constitutional offensives and in engineering the Chief Justice's fall from the bench in 1616. Thereafter, his succession to the Keepership sanctioned by both Ellesmere and Buckingham, Bacon at last attained a measure of political security. But he could never afford wholly to ignore factional in-fighting, as his key part in the ensuing downfall of the Howards demonstrates. His own vulnerability was simply a political fact of life.

In the event, the lawyers in the House of Commons in 1621 recognized the need for circumspection in moving against Bacon. William Noy , an erstwhile associate,[6] exactly defined the Commons' frame of reference in the case:

> That we should discuss the business thoroughly here before we let it fly abroad. There are under debate several persons, some accused, accusers, witnesses. We are not to exact here a variety of testimony. . . . The offence is of one that hath taken an oath as a judge, as a councillor, and is against the king forasmuch as in him lieth he hath broken the king's oath, and against the kingdom. . . . Of necessity, we must go to the Lords. But there may be question whether to them alone and without the king. . . . In commending it to the Lords, not to deliver it as a thing certain . . . but as an information. . . .[7]

The Commons' appeal to the jurisdiction of the Lords was the touchstone of the revived parliamentary judicature. On 19 March, the allegations against Bacon were duly turned over to the upper House,[8] despite a last-minute proposal from the king that an independent commission of inquiry

be set up instead.[9] Thereafter, while any further complaints lay to the Commons in the first instance, witnesses were examined under oath by the Lords, who appointed three committees to conduct the business.[10] Under the mounting weight of evidence--"daily more petitions and accusations than they can overcome"[11]--the Lord Chancellor's political fortunes drastically declined. Illness prevented him from appearing in his own behalf,[12] but even more debilitating was the king's reluctance to intervene,[13] and events moved swiftly to his confession and submission,[14] and finally to his removal from office on 1 May.[15]

Of the particulars of the charges against Bacon, little need be said here. In a letter to James, he insisted that "howsoever I may be frail and partake of the abuses of the times", gifts and gratuities had never influenced him to pervert the course of justice.[16] In his view, three degrees or cases of "bribery" might be distinguished--where a bargain or contract was agreed pendente lite; where a judge mistakenly conceived a case to be ended; and where payment was made sine fraude after a case had been decided.[17] According to Bacon, only the first constituted unambiguous grounds for a charge of corruption, and in that regard he found himself "as innocent as any born on St. Innocent's Day, in my heart". For the rest, the Lord Chancellor confessed he may have been injudicious or careless.[18] Certainly that is the logical inference that can be drawn from much of the testimony against him, and it may suggest that he was to some extent the victim of a witch-hunt. The problem was that no hard-and-fast rules governed the system of fee-taking in the

early modern period: there was a grey area between bribery per se and those accepted perquisites without which the entire structure of office-holding was scarcely viable. In short, evidence that Bacon had taken gifts from litigants before, during, and after suits in Chancery did not necessarily mean that he was a corrupt judge, though the activities of his servants were suspicious.[19] Indeed, the two petitions which touched off the scandal complained that the Lord Chancellor had decided against the parties from whom he had received sums of money.[20]

It is clear, then, that Bacon's fall is not adequately explained in terms of the formal proceedings against him in Parliament. His own bitter observation that "greatness is the mark and accusation the game"[21] has some truth in it, but the point was that the king found Bacon a political liability and was content to sacrifice him. The Lord Chancellor was directly in the line of fire of the reformers in the House of Commons, led by his bête noire, Coke. Personal animosities cannot be discounted but the roots of the conflict went deeper. The Commons' committees of the whole for grievances and for the courts turned up a series of damaging complaints against Bacon's stewardship, both as the watchdog at the great seal, and as an administrator and judge. It is only in the context of these complaints that the dimensions of the political crisis in the 1621 Parliament are comprehensible. Bacon was the bellwether of Jacobean domestic policy; his destruction dramatised widespread dissatisfaction with the government's own steps in the direction of reform. Above all, it was a question of out-moded or

unacceptable nostrums for the tottering administrative structure of the state--in just this way, the distinct themes of patronage and the legal system can usefully be juxtaposed. The issues raised are all-embracing, but Bacon's Chancellorship provides an obvious link.

FOOTNOTES--INTRODUCTION

[1]C. Tite, Impeachment and Parliamentary Judicature in Early Stuart England (London, 1974).

[2]See the report of Sir Robert Phelips, the acting chairman of the committee, 15 March, 1621, Commons Debates 1621, ed. W. Notestein, F. Relf, H. Simpson (New Haven, 1935), ii, pp. 224-226; v, pp. 40-41; also Journals of the House of Commons (n. p., n. d.), i, p. 554.

[3]Bacon was named as a referee at a conference between the Houses, 10 March, 1621. See below, Chapter II, "Bacon and the Patents".

[4]14 March, 1621. See below, Chapter III, "Bacon and Chancery Reform".

[5]Bacon to Buckingham, 14 March, 1621, The Letters and the Life of Francis Bacon (London, 1861-1874), vii, p. 213. Bacon declared that he had "clean hands and a clean heart": "But Job himself, or whosoever was the justest judge, by such hunting for matters against him as hath been used against me, may for a time seem foul, specially in a time when greatness is the mark and accusation is the game. And if this be to be a Chancellor, I think if the great seal lay upon Hounslow Heath, nobody would take it up." Ibid.

[6]Noy , with Chief Justice Hobart, Serjeant Finch, Heneage Finch, William Hakewill, among others, sat on Bacon's commission inquiring into obsolete and "concurrent" statutes. For this enterprise, see The Letters and the Life of Francis Bacon, ed. J. Spedding (London, 1861-1874), v, pp. 84-86; vi, pp. 57-59, 64-67, 70-71; also Commons Debates, ii, p. 72; iv, p. 47.

[7]17 March, 1621, Commons Debates, iv, p. 167.

[8]Conference between the Houses, 19 March, 1621, Commons Debates, v, 310; Journals of the House of Lords (n. p., n. d.), iii, p. 52.

[9]The proposed commission was to include twelve members of the Commons and six of the Lords but Sir Edward Coke recognized in it a tactical ploy of the Crown to forestall the exercise of parliamentary judicature. The House's reply to the proposal was deliberately noncommittal and the idea was dropped. 19 March, 1621, Commons Debates, ii, p. 245.

[10]21 March, 1621, Lords Journals, iii, pp. 58-60; see also The Hastings Journal of the Parliament of 1621, ed. E. de Villiers, Camden Miscellany, xx (London, 1953), pp. 31-32.

[11]John Chamberlain to Dudley Carleton, 24 March, 1621, The Letters of John Chamberlain (Philadelphia, 1939), ii, p. 354.

[12]Chamberlain suspected that the illness was diplomatic, Ibid., pp. 355-356; but Bacon averred in a letter to the Lords that it was "no feigning nor fainting, but a sickness both of my heart and of my back, though joined with that comfort of mind that persuadeth me that I am not far from heaven, whereof I feel the first fruits". Lords Journals, iii, p. 54.

[13]On 21 April, Bacon wrote to the king begging that "your Majesty will graciously save me from a sentence with the good liking of the House. . . . The means of this I most humbly leave unto your Majesty. But surely I conceive, that your Majesty opening yourself in this kind to the Lords Councillors, and a motion from the Prince after my submission, any my Lord Marquis using his interest with his friends in the House, may effect the sparing of a sentence; I making my humble suit to the House for that purpose, joined with the delivery of the seal into your Majesty's hands." Letters and Life, vii, p. 241. The king, with a rare show of good judgment, remained aloof.

[14]A first submission, dated 22 April, was rejected by the Lords in that the confession therein "was not fully nor particularly set down. . . ." Lord Journals, iii, p. 85. A new submission received by the Lords on 30 April contained Bacon's detailed response to twenty-eight articles against him. Ibid., pp. 98-100.

[15]Ibid., p. 104. The great seal was taken from Bacon and temporarily entrusted to a committee led by Lord Treasurer Mandeville.

[16]Bacon to James I, 25 March, 1621, Letters and Life, vii, p. 226.

[17]Bacon's notes for an interview with the king, April, 1621, Letters and Life, vii, pp. 235-236.

[18]Ibid., p. 236.

[19]In one notorious case, an anxious suitor, Edward Egerton, had been induced by one of Bacon's servants to enter into a 10,000l. recognisance to pay 6,000l. to Dr. Theophilus Field, bishop of Llandaff and an intimate of Bacon and Buckingham, for his assistance in moving the Lord Chancellor to make a favourable order. In the end, this influence-peddling scheme came to nothing, but it is a commentary on the presuppositions of those surrounding Bacon. See Commons Debates, ii, pp. 225-226; iv, p. 156; vii, pp. 578-579.

[20]See the petitions of Christopher Aubrey and Edward Egerton, reported to the House of Commons on 15 March, 1621, Commons Debates, ii, pp. 224-226. Still, there is evidence of Bacon's susceptibility to another kind of bribery--what Edward Coke called "bribery in affection by letters and messages" from great men. Commons Debates, iv, p. 267. Professor Hurstfield singles out the case of Steward v. Steward in which Bacon amended his decree after a personal appeal by Buckingham. J. Hurstfield, "Political Corruption in Modern England: the Historian's Problem," in Freedom, Corruption and Government in Elizabethan England (London, 1973), p. 147 n. An analysis of the details of Steward v. Steward is in Letters and Life, vii, Appendix I, pp. 579-588.

[21]Letters and Life, vii, p. 213. The full citation is given above, in footnote 5.

CHAPTER II

BACON AND THE PATENTS

As Solicitor General, Attorney General, and finally Lord Chancellor, Francis Bacon was intimately associated with the exercise of prerogative rights challenged by Edward Coke and others as novel and arbitrary. Bacon, characteristically, maintained that the prerogative and the common law were complementary, but contemporaries had reason to be skeptical. In 1620 it was noted that

> . . . the Lord Chancellor took occasion to enlarge himself much upon the prerogative, and how near it was akin and of blood (as he termed it) to the common law, saying further (whatsoever some unlearned lawyers might prattle to the contrary) that it was the accomplishment and perfection of the common law: which new doctrine but now broached is perhaps to prepare the way to a purpose in hand that all men shall be rated and pay by way of subsidy as if it were done by Parliament, and those that refuse, their names to be certified, that order may be taken with them.[1]

In the event, it was not impositions but that other great bugbear of the rising parliamentary opposition, the patents of monopoly and privilege, which bore the brunt of the attack in the House of Commons in 1621. It was a commonplace that the fault lay, not with the king, but with his advisers; among the royal servants implicated, the Lord Chancellor stood out. If the favourite, Buckingham, was the prime mover behind many of the grants after 1616, it was Bacon who rendered expert advice on suits, expedited patents to the seal, and directed the punishment of infringements. Never an important broker of patronage himself, he was the pivotal figure in the operation of the system and an obvious target for its opponents in 1621.

S. R. Gardiner argued that the offending grants, though they were ill-designed and invited abuse, were nevertheless, "taken as a whole, an expression of a definite commercial policy, bearing frequently the impress of Bacon's mind. . . ."[2] On this reading, ubiquitous monopolies might be justified as the instrument of royal paternalism, in regulating trade, in fostering domestic industry, and generally in maintaining good order in the commonwealth. Yet, at the same time, monopolies underscored the chronic weakness in the administrative structure of the State, serving as a form of reward or remuneration for the Crown's loyal servants, sometimes in lieu of fees. This introduction of the profit motive inevitably tended to vitiate royal policy in practice, and aroused widespread suspicion and resentment. Projectors claimed, as a matter of course, to promote the better order of the commonwealth; their presuppositions, like those of Bacon and James I, were seriously open to question.

Opposing them, Edward Coke, the supreme rationalist of the law, sought to demonstrate that "all grants of monopolies are against the fundamental and ancient laws of this kingdom". The Third Part of the Institutes contains Coke's celebrated definition of a monopoly:

> A monopoly is an institution or allowance by the king by his grant, commission, or otherwise to any person or persons, bodies politic or corporate, of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade.[3]

In addition to Magna Carta and statutes from the time of Edward III, Coke's definition drew on recent judicial decisions. In Davenant v. Hurdis

(1599), in the face of an ordinance of the corporate patentees, the Merchant Taylors' Company of London, binding members of the Company to put at least one-half of their cloth to be finished by brother members, the court upheld the freedom of an individual Brother to dispose of his cloth as he chose.[4] As Coke reported the case: "it was adjudged that that ordinance, although it had the countenance of a charter, was against the common law because it was against the liberty of the subject" and constituted a monopoly. Hence, despite the Crown's incontestable right to provide for the good government of a trade, "such ordinance by colour of a charter, or any grant by charter to such effect, would be void".[5] Strictly speaking, the patents disputed by Coke and the common lawyers were not all commercial "monopolies" in this sense, but took in a range of different privileges by which a patentee was empowered to exercise in the king's name powers belonging to the prerogative. The critical objection held: insofar as a grant restrained the freedom of the subject under the "ancient constitution", it was void. Explicitly excepted from this stricture were monopoly patents for new inventions and trades; in such cases, the greater good of the commonwealth might override individual liberties, at least temporarily. Indeed, the grant of short-term monopoly privileges to encourage the establishment of new industries was a long-standing principle in law and never seriously in dispute.[6]

The real difficulty was in prescribing limits to the action of the prerogative by argument from the common law. As a consequence, attacks on the royal patents emphasized their "inconvenience" and harmfulness to the commonwealth. A leading decision, in Darcy v. Allen

(1601-1603), the "Case of the Monopolies", listed three incidents inseparable from a monopoly:

> 1. that the price of the same commodity will be raised, for he who has the sole selling of any commodity may and will make the price as he pleases. . . .
>
> 2. That after the monopoly granted, the commodity is not so good and merchantable as it was before; for the patentee having the sole trade, regards only his private benefit, and not the commonwealth.
>
> 3. It tends to the impoverishment of divers artificers and others, who before, by the labour of their hands in their art or trade have maintained themselves and their families who now will of necessity be constrained to live in idleness and beggary. . . .[7]

It was held that the franchise to one Edward Darcy of the sole right to manufacture playing cards within the realm, and to import them from abroad, tended only to "the benefit of a private man . . . in prejudice of the commonwealth", against the common law and diverse acts of Parliament.[8] And the court therefore found Darcy's grant void.

Yet the fact was that royal patents were not generally examinable by the courts on the action of a private party. Darcy v. Allen was the exception that proved the rule. The Privy Council regularly intervened to pre-empt lawsuits against patentees, on the grounds that such actions were in contempt of the prerogative. Darcy, for example, invoked this protection more than once when a haberdasher from whom unlicensed playing-cards had been seized brought an action for trespass. The directives of the Council constituted an unambiguous prohibition to the judges of the court of Common Pleas.[9] It was Darcy himself who brought suit in the "Case of the Monopolies", claiming his profits on unlicensed goods. It

is interesting to note that his chief counsel was the Attorney General, Edward Coke--a commentary, perhaps, on the great lawyer's adaptability, and evidence of the Crown's concern to back up patentees.

Monopolies were an explosive political issue in the last two Parliaments of Queen Elizabeth I. Though the details are unclear, it appears that in 1597 Elizabeth was able to forestall Commons' debate on the royal patents only by conceding the principle of judicial review. The Speaker's closing address rendered thanks for the queen's initiative in ordering "reformation in your courts of justice of the strange and exceeding abuses of the patents of privilege, commonly called monopolies. . . ." In his reply, the Lord Keeper noted that while the sovereign, for her part, "hoped that her dutiful and loving subjects would not take away her prerogative", she herself would undertake that the patents "shall all be examined to abide the trial and true touchstone of the law".[10] How far Elizabeth meant to follow through on this undertaking is uncertain, but in 1601 Francis Bacon declared that to his knowledge at least fifteen or sixteen grants had been revoked as a result. The patents were tried

> both at the Common Pleas upon action of trespass; where, if the judges do find the privilege good and beneficial for the commonwealth they will then allow it, otherwise disallow it; and also I know that her Majesty herself hath given commandment to her Attorney General to bring divers of them, since the last Parliament, to trial in her Exchequer.[11]

Such proceedings notwithstanding, monopolies continued to multiply and it took all of the queen's considerable political élan to outface a mutiny in the Commons in 1601. Debate on a bill "for

explanation of the common law in certain cases of letters patents" cut perilously near the prerogative. It was left to Bacon to uphold the sovereign's right "to set at liberty things restrained by statute law or otherwise", and to "restrain things that are at liberty", where it was to the benefit of the commonwealth. He cited cases of new inventions and gluts or scarcities in the marketplace. But only very grudgingly did he acknowledge the Crown's dispensing power over statute law, find the non obstante clause in patents "as hateful to the subject as monopolies".[12] Bacon was willing to concede that the Commons had a just grievance concerning the patents, yet he was bound to protest any proceeding against them by bill. The House might petition dutifully for redress; it must not presume to dictate to the queen, "especially when the remedy toucheth her so nigh in point of prerogative". The disclaimer was vintage Bacon: he begged the Commons "to testify with me that I have discharged my duty in respect of my place in speaking on her Majesty's behalf. . . ."[13] In the circumstances, he was quick to second Townshend's proposal that the Commons petition the queen both for repeal of the offending monopolies and for leave to make an act "that they might be of no more force, validity, or effect than they are at the common law without the strength of her prerogative".[14]

The petition never materialised, for in a well-timed diplomatic coup, Queen Elizabeth announced her independent decision to repeal a number of monopolies immediately and to suspend others pending trial in the courts. The royal proclamation, dated 28 November, 1601, made no mention of the parliamentary initiative. Upon examination of "divers

informations" of grievances, it appeared that grants had been made on false claims and further abused in the execution: the queen freely disowned them, along with the patentees' letters of assistance from the Privy Council. But there was a rider expressly enjoining subjects from questioning "the power or validity" of the prerogative--to do so was sedition.[15] The Commons declared themselves content and Elizabeth took the occasion to gloss over the crisis, in her classic "Golden Speech":

> . . . if my kingly bounties have been abused, and my grants turned to the hurt of my people, contrary to my will and meaning, and if any in authority under me have neglected or perverted what I have committed to them, I hope God will not lay their culps and offences to my charge; who, though there were danger in repealing our grants, yet what danger would I not rather incur for your good, than I would suffer them still to continue?[16]

This lesson in public relations was not lost on the queen's successor. Soon after his accession James I issued a proclamation suspending the execution of all monopoly patents granted by Elizabeth, except those chartering trading companies, until they could be scrutinised by the Privy Council.[17] And to prevent abuses in the future, councillors were commissioned to inquire into and certify all grants before they passed the seal.[18] Yet, while these references were of practical value in rationalizing the grounds on which suits would be entertained, there was a steady increase in the numbers of monopoly patents--and a corresponding expansion of the patentees' control over the economy. The problem was that, in political terms, the new king could not afford to deny his servants the royal bounty: the machinery of early-modern government had to be well-oiled. In the event, though there was a moratorium in the first session of James' first Parliament, the question of monopolies came

to the fore in 1606, and in subsequent sessions.

In fact, James was besieged by an incessant stream of importunate suitors and projectors. In 1609 he was forced to reorganize the commission for hearing suits in order to ease the load on the Privy Council. Notable among those singled out for regular duty as referees were the Solicitor General, Bacon, and Sir Julius Caesar, then Chancellor of the Exchequer, who was directed to sit in all cases involving the lands or revenue of the Crown. The king's instructions to the referees are revealing:

> . . . in case you shall perceive these suits are any way derogatory to those natures of suits which we left to be ordered by our principal commissions for our use, that you allow of none of those. . . . By which means, especially being such as do belong to us de jure Corone, and not by pressing upon penal statutes, (which, being otherwise pursued than by the laws are directed, prove full of clamour and oppression), we have resolved to raise, if it may be, some means for supply of our debts and therefore cannot give way to any suit that may entangle general commissions and projects for some reasonable time only until we shall have discharged the same. . . .[19]

If it was plain that "no sovereign can be without service nor service without some reward", a priority understandably was assigned to those suits which promised to enhance the royal revenues. It was a nice question whether this did not mean, in effect, that the Crown was in the business of selling its favours to the highest bidder. In any case, the rewards were disappointing: patentees regularly defaulted on their commitments to the king.[20]

The continued financial embarrassment of the Crown emboldened the Commons in 1610 to present a strongly-worded Petition of Grievances citing James' record of broken promises on monopolies. In no uncertain terms, the king was invited to make good his undertaking to submit to

the determination of the common law the validity of Lennox's patent for searching out and sealing new draperies. The House found "by divers complaints in this session renewed, that not only the said letters patents are still kept on foot . . . but disorders in their execution are so far from being reformed that they multiply every day. . . ."[21] There was an equally blunt condemnation of the Lord Admiral's patent for licensing the sale of wines, as depending on dispensation of an obsolete statute. The petitioners lectured James on the limits of the prerogative: a statute made pro bono publico was entrusted to the king "by a common consent of the realm", which trust was "so inseparably annexed to his person that he cannot transfer the disposition or power of it to any private person or to any private use".[22] Upon an outdated statute, dispensations were simply a means of extortion.

There were serious doubts about the king's good faith; piecemeal gestures in the direction of reform no longer would serve. James was forced to act, hastily publishing "A Declaration of his Majesty's royal pleasure, in what sort he thinketh fit to enlarge or reserve himself in matter of bounty". For the information of both advisers and suitors, the "Book of Bounty" set out the general conditions which henceforth would govern patronage. The centerpiece was a schedule of

> those special things for which We expressly command that no suitor presume to move Us, being matters either contrary to Our laws, or such principal profits of Our Crown, and settled revenue, as are fit to be wholly reserved to our Own use until Our estate be repaired.[23]

Monopolies were damned outright as contrary to law--though a "monopoly" was not defined--as were all grants of the power to dispense with penal

laws or compound for forfeitures. Patents might be granted for new inventions only insofar as they were good in law and did not harm the commonwealth by raising prices or depressing trade. Among those matters reserved to the king's use alone were licences to import and export commodities prohibited by law and to dispense with customs. Moreover, the Crown claimed sole enjoyment of all profits accruing from the royal seals.[24]

In fact, what the Book of Bounty seemed to promise was a radical revision in Jacobean finance and administration. Under its terms, the unbridled interference of state-sponsored patentees in every aspect of economic activity would give way to a measure of enonomic liberty under benevolent royal supervision. In theory, the king's Book was to be the touchstone of reform down to the 1624 Statute of Monopolies, which adduced it as an authority. Yet, in the event, the intervening period witnessed a dramatic increase in the number of monopolies. In 1620, it was reported that

> in truth the world doth ever groan under the burthen of these perpetual patents, which are become so frequent that whereas at the king's coming in there were complaints of some eight or nine monopolies then in being, they are now said to be multiplied to so many scores.[25]

The increase was most obviously associated with the apotheosis of Buckingham as "chief broker" of the royal patronage. Lord Chancellor Ellesmere had taken it on himself to check the worst excesses at the great seal, in spite of--perhaps partly because of--his failing health.[26] Bacon, Ellesmere's heir, faced a new set of political realities revolving around the favourite. How far Bacon owed his appointment to Buckingham is a moot point, though his careful cultivation of the connection is

well-documented.[27] What is certain is that he never enjoyed the same freedom of action as his predecessor, whose very aloofness was the sine qua non of his political longevity. Given his own long experience of faction, Bacon was scarcely the man to teach the post-Howard Establishment unpalatable truths, however vital to the interests of the Crown.

The king, for his part, was anxious that letters patents should not pass the seal merely as "a matter of course to follow after precedent warrants", but only where the "maturity and fullness" of his intentions appeared. It was therefore the Chancellor's solemn duty to report any scruple he might have to the king.[28] The conditions of this trust were set out in Bacon's maiden speech in Chancery in 1617. There might be just cause for staying a grant either in its substance or in the manner in which it had been preferred: the new Keeper distinguished six particular instances.[29] Where a suit touched the king's revenue or estate, it was to be certified by the Lord Treasurer and the Chancellor of the Exchequer; otherwise, it must be presumed "to have passed in the dark and by a kind of surreption". In the same way, grants involving some specialized knowledge of the law required a docket of learned counsel for the better information of the king. Patents which in the Lord Chancellor's judgment were contrary to law were to be referred back to learned counsel, and those which seemed likely to cause inconvenience to the realm examined by the king or his Privy Council. Above all, by express royal command, any grants against the Book of Bounty were to be stayed "until the king either revise his Book in general or give direction in the particular". Yet ultimately there is something equivocal in Bacon's claim that he

meant thus "to walk in the light, so that men may know where to find me". If by publishing a statement of general policy he hoped to forestall unacceptable demands, he was plainly disinclined to assume the responsibility himself for refusing suits. His rules were, he insisted, "wholly submitted to his Majesty's will and pleasure . . . for if iteratum mandatum do come, obedience is better than sacrifice".[30] This was the unmistakable thrust of Bacon's policy towards the patents: ready compliance with the will of the king or his favourite.

By the same token, in 1620 Bacon was quick to condemn the then Attorney General, Henry Yelverton, for misprision in drawing up a patent which exceeded the royal warrant. Yelverton was held culpable for the unauthorised insertion of novel privileges into a charter for the City of London, and his case went to Star Chamber. Delivering the concluding arguments, Bacon warned of the dangerous consequences of the offence: "for if the king's counsel be suffered to practice by multiplication on their warrant, the Crown will be undone in a short time". He noted that it was, moreover, the Attorney General's docket which most often guided the king.

> For the docket, let him deal fairly therein, and if he think the king will startle at anything, let him not smooth it. And be sure to involve nothing in general but matter of course. Nor to relate to the warrant, for that sometimes passes from the king upon credit, but the docket upon judgment, for the king always reads that. Much of the life blood of the Crown breathes or beats in this vein. Nor is it fit for the Attorney to move suits or tell others how to draw warrants.[31]

This advice reflected Bacon's own experience as James I's Solicitor and Attorney: the royal warrants were not to be denied, but neither were

the king's counsel to presume too much upon them or upon their own dockets. Still, with Parliament in the offing, there was undoubtedly something more urgently political in the exemplary punishment of Yelverton.[32] Bacon was already at work putting the best face on the patents.

In October, 1620, the king nominated a committee, headed by Bacon, to draft Government strategy for a new Parliament.[33] The attempt "to personate the lower House, and cast with ourselves what is like to be stirred there" convinced the committee that the chief grievances which had arisen since the last Parliament were proclamations and patents.[34] Proclamations, for reasons of the prerogative, could not safely be touched, but action was recommended on three kinds of patents found most objectionable--those for the recovery of old debts, for discovery of concealments, and for monopolies and dispensations of penal laws.[35] While the first two might conveniently be left to Parliament to remedy, the third category required some immediate attention. The commission urged that selected monopolies, "such of them as his Majesty shall give way to have called in", should be damned by the Privy Council as contrary to the king's Book of Bounty, abused in the execution, or somehow burdensome to the realm. But it was important that this step should be seen in the proper light--not merely as a sop to public opinion in anticipation of a Parliament, but

> partly upon revising of the Book of Bounty, and partly upon the fresh example, in Sir Henry Yelverton's case, of abuse and surreption in obtaining patents; and likewise that it be but as a continuance in conformity of the Council's former diligence and vigilancy, which hath already stayed and revoked divers patents of like nature, whereof we are ready to show the examples.[36]

The Council's "diligence" had more often cut the other way, but it was hoped that this dissumulation would effectively outflank the parliamentary opposition.

The Lord Chancellor's committee singled out for pre-emptive action those patents which appeared to be most vexatious to the common people and to gentlemen and justices of the peace, "the one being the original, the other the representative of the Commons".[37] The schedule of these patents, naming all who had an interest in them, has not survived, but in a personal letter to Buckingham, Bacon warned that among them were some "which may concern some of your Lordship's special friends, which I account as mine own friends; and so showed myself when they were in suit".[38] In view of their notoriety, it had proved impossible "in duty" to omit from the list the patents to Sir Giles Mompesson, for the licencing of inns, and to Patrick Maule and Christopher Villiers, Buckingham's brother, for alehouse recognisances. Ominously, these two were "more rumoured, both by the vulgar and by the gentlemen, yea, and by the judges themselves, than any other patents at this day". Bacon bluntly advised the favourite to disown them both and "rather take the thanks for ceasing them, than the note for maintaining them"; the meagre profits involved scarcely justified the political risks.[39] The time had come to cut losses and beat a tactical retreat, and Buckingham's cooperation was essential.

The committee's recommendation for direct action against the most repugnant patents was submitted to the Privy Council in mid-December, 1620.[40] Bacon contended optimistically that such action would encourage

the Commons the settle down to the main business at hand--the king's subsidy--since "these things [the patents] should not be staged nor talked of, and so the less fuel to the fire". But against this view, it was pointed out that no one was likely to be deceived as to the motives of the Council, and that "it would be thought but an humouring of the Parliament (being now in the calends of a Parliament), and that after Parliament they would come up again". Alternatively, it was proposed that the king might do better to allow the Commons to discuss the patents after all, "since they can do nothing of themselves", and salvage what credit he could by favouring their petitions for redress. Given the political climate, this tactic in the style of Elizabeth I plainly was liable to backfire, but the Privy Council finally opted for it, in the absence of any clear indication of Buckingham's intentions. The Lord Chancellor professed himself content, averring that, like Ovid's mistress, he strove, "but yet as one that would be overcome".[41] Still, Bacon urged Buckingham once more, as he valued his honour, to disavow the offending patents before Parliament met. In the end, nothing was done. As late as 30 December, at Buckingham's insistence, a controversial new patent was passed, for the sole engrossing of wills in the two prerogative courts.[42]

In his speech opening Parliament on 30 January, 1621, the king cleared the way for debate on the royal patents, declaring that "though I may have been deceived that I have done many things hurtful to myself and prejudicial to my people in point of grant; when I hear of them, if I be rightly informed, accordingly I will reform them".[43] The Commons

lost no time in taking up the challenge. On the second day of business, there was a motion that Mompesson's commission for making gold and silver thread, and all similar patents, should be examined, and that inquiry should be made into the references upon which the grants had been based. Thus "the faults might be taken from his Majesty and lie upon the referees who misled his Majesty and are worthy to hear the shame of their own work".[44] These points were referred to the committee of the whole for grievances, chaired by Edward Coke, which considered them on 19 February. In a key speech, William Noy absolved the king of responsibility for monopolies and dispensations of the penal laws--"the chief grounds of all the grievances"--and blamed suitors and referees who conspired to undo the Book of Bounty. Noy found that "some patents are good in truth but abused, others ill in their own nature. Both the abuse and quality are properly to be inquired here".[45] Coke agreed and managed a formidable, if rather perverse, show of precedents.[46]

Both lawyers cited Mompesson's patent for licencing inns as the prime example of a grant "good in law but ill in execution". Mompesson, Buckingham's relation by marriage and an M. P., was ordered to bring in his patent and his books for examination by the committee.[47] In fact, the commission for inns had an impressive pedigree: it had been granted, in 1617, after references to Attorney General Bacon and three leading justices, in point of law, and to the Lord Treasurer, the two Secretaries, and two serjeants-at-law, on the question of its "convenience".[48] The patent, drafted by Bacon, Montagu, and Finch,[49] recited the great disorders resulting from unlicenced inns, and the lack of local remedies:

> because the authority of Justices of Peace extendeth not to the licencing of inns and common hostelries, and that the Justices of Assize by reason of their other manifold employments and the short time whereunto they are confined in their circuits cannot have leisure to take sufficient information who may be fit persons for such licences to be granted unto them . . .[50]

Mompesson and his two assistants were to step into the breach, "contracting and compounding" with suitable candidates for maintaining or erecting inns, upon such a fine and yearly rent as they thought fit. A specimen licence was included, binding the innkeeper to keep the assizes of bread, ale, and measures, and to observe the official price of horsemeat.[51]

In theory, then, the commission was a response to certain genuine social and administrative problems. Indeed, Gardiner places it in the context of "the great question between the central government and the local authorities, which at this period meets us at every turn"--with Bacon the mastermind of the policy of the Crown.[52] But there were complaints of flagrant abuses by Mompesson and his henchmen. In addition to the fixed pension attached to his office, Mompesson by another grant had secured a one-fifth share of the profits from fines and rents negotiated by the commission.[53] Supervision and regulation degenerated into extortion. The committee heard evidence that inns were being licenced in excessive numbers, with no regard to good order, and at an extortionate rate, and that the patentee was using the threat of quo warranto proceedings at Westminster to terrorize the local population.[54] Great sums were thereby "drawn out of the country", and the price of victuals to travellers inevitably was driven up. On 21 February, the

patent was damned in the Commons as a grievance both in the execution and--the earlier opinions of Coke and Noy notwithstanding--in the original. The grant was held to be unlawful insofar as it was "without precedent, mischievous to the commonwealth, did restrain trade and impeach the liberty of the subject".[55] Sir Francis Seymour drew the logical conclusion: "I cannot believe but that the referees are in some fault, which, whether it be fit to consider, I leave to the consideration of this House".[56] The theme was not taken up; for the moment, the patentees themselves remained the issue.

The House went on to consider the patent for alehouse recognisances, which, like Mompesson's for inns, touched the power of the justices of the peace. As early as 1618, Bacon, to whom the matter was referred, expressed reservations in a letter to Buckingham:

> For the suit of alehouses which concerneth your brother Mr. Christopher Villiers, and Mr. Patrick Maule, I have conferred with my Lord Chief Justice and Mr. Solicitor thereupon, and there is a scruple in it that it should be one of the grievances put down in Parliament; which if it be, I may not in my duty and love to you advise you to deal in it; if it be not, I will mould it in the best manner and help it forward.[57]

The note of expediency was characteristic of Bacon; the point was that the House of Commons could be expected to back local authorities against interlopers from the Court. In effect, the 1618 patent threatened to reduce the justices of the peace, to whom the power to licence alehouses was entrusted by statute (5 Ed. VI c. 25), to a bare clerical function. By writs of certiorari, all recognisances for keeping good order were to be removed from the general sessions of the peace into King's Bench at Westminster, "there to remain of record".[58] Dixon and Almond, the clients

of a group of gentlemen projectors,[59] were authorised to take all forfeitures or compositions on the recognisances, "and to do everything warranted by statutes whereby the penalties may be the sooner levied or the abuses the sooner reformed. . . ."[60]

Again, while the problems of drunkenness and disturbances of the peace were of very real concern to the government,[61] the financial arrangements of the commission were suspicious. The patentees were allowed one-half of the profits on the forfeitures; a subsequent grant reserved the king's moiety to Maule, one of the projectors.[62] The House committee uncovered a history of oppressive proceedings cloaked with the authority of the judges, whose cooperation was commanded by proclamation of the king:[63]

> these patentees sent forth committees into all shires of England to compound with all such as were bound in any recognisance; and, if they would not compound, then the committees should cause such as refused to appear in the King's Bench, where an information should be exhibited accordingly against them.[64]

It was obvious that the overriding motive was one of private profit--alehouse disorders continued unabated. There was an attempt to question the courtiers behind the patent,[65] but the committee singled out as the chief offender Sir Francis Michell, a justice of the peace, who confessed that "both his pen and consent was in the letter for compositions to be made in the country".[66] On 22 February, the patent was adjudged a grievance both in grant and execution.[67] Michell, in his own defence, protested that it had been certified by "some of the most eminent and judicial eyes of this realm".[68] His petition enraged the House and he was summarily committed to the Tower, though the technical grounds for

such action were unclear.[69]

The Commons was in full cry over the patents. Coke compared the case of Mompesson, for the inns, to that of Henry VII's minister, Sir Richard Empson, "who was indicted of treason for sending out process to vex the king's people. . . ."[70] The question of Mompesson's punishment was crucial. The eventual decision to take the case to the Lords had striking constitutional implications; indeed it was this "revival of parliamentary judicature" which laid the groundwork for Bacon's trial in April, 1621.[71] Meanwhile, the committee for grievances gathered further evidence of Mompesson's interest in a range of offending patents, notably for concealments and for the manufacture of gold and silver thread.[72] The hotter reformers were encouraged to claim a broadened frame of reference for their inquiries. Seymour again called for the examination of referees, who, he thought, could scarcely plead ignorance, "for then they should deny that profession wherein they have spent most of their time". These wrongdoers, however high-placed, were to be punished.[73] Lionel Cranfield, himself a privy councillor, agreed--his experience in the City in any case predisposed him to take a dim view of patents which restrained trade:

> We have a projector and a patent. The projector had had no patent if the referees had not certified both the lawfulness and conveniency. Let these things be considered. This is other mens' case now, it may be mine tomorrow. If I have at any time misled the king, I had rather submit myself to the mercy of the king than that any dishonour should come to the king or hurt to the commonwealth.[74]

This kind of rhetoric boded ill for Bacon. On 3 March, at a conference between the Houses, Buckingham endeavoured to excuse his own "acquaintance" with Mompesson's projects: "for the blame was not in him but in the

referees that misled him."[75]

Two days later, the Commons began its hearings into the commission to Mompesson and Michell for manufacture of gold and silver thread. In 1611, a monopoly of the process had been granted, as for a "new invention", to a private syndicate, but this encountered immediate opposition from goldsmiths, dyers, and silkmen. The Privy Council was forced to intervene to combat repeated infringements, and a new patent, in 1616, passed the great seal only after a stay of seventeen months while Ellesmere considered the goldsmiths' case.[76] The sniping between patentees and interlopers continued and at length it was proposed that the Crown itself take over the monopoly. The enabling proclamation, dated 22 March, 1618, invoked reasons of state--protection of the subject against counterfeit thread and preservation of bullion within the kingdom[77]--and set out terms for the operation of the monopoly:

> . . . that Our loving subjects in all parts shall not at any time want convenient quantity of the said gold and silver thread for their use, but shall also be served of it at reasonable prices: And that such as are skillful in the working and spinning thereof shall be employed therein, if they faithfully and honestly perform the same, and at such rates and wages as they whom We specially shall licence thereunto shall think meet and convenient. . . .[78]

The arrangement was certified by Bacon, Montagu, and Yelverton.[79] A former patentee, Matthias Fowle, was duly indentured to act as the agent of the Crown,[80] and a commission including leading councillors was empowered to search out and punish infringements.[81] After some initial setbacks, the commission was reconstituted in October, 1618, and Mompesson and Michell came to the fore.[82]

The subsequent history of the monopoly for gold and silver thread forms a dismal catalogue of oppressive quotas, counterfeiting, confiscations, and coercive bonds.[84] So much appears from the reports of Sir Robert Phelips and William Hakewill to the Commons in March, 1621.[83] Thus, for example, when silkmen refused to enter into a bond not to trade or meddle in the restricted thread, Mompesson declared that "if persuasions availed not, he would effect it by a strong hand, and upon their refusal would fill all the prisons about London".[85] In this, if the fallen Yelverton's later testimony can be trusted, he was abetted by one of Buckingham's brothers, who had a share in the monopoly--and by Bacon:

> Sir Edward Villiers, having 4,000l. stock in this adventure and finding that it was opposed, prayed Sir Henry Yelverton to assist him or else all would fall to the ground and the business lay a-bleeding. And so he desired him by his power to imprison some, to which he consented and sent them to the Fleet; but with this caution, that he would release them presently if my Lord Chancellor did not confirm it. But my Lord confirmed it. And Mr. Attorney said he feared to release them because of Sir Edward Villiers and Sir Giles Mompesson.[86]

According to Yelverton, Bacon actually heard arguments for the prisoners, but re-committed them to the Fleet. It was left to the king to free them, on a petition of the Mayor and City of London, saying that "he would not govern his people by bond".[87] Yet the taking of bonds from silkmen and goldsmiths was authorised by a royal proclamation dated 10 October, 1619[88]--the imprisonments may have been for contempt.[89] In any case, Bacon's attitude was clear: the commission, of which he himself was nominally a member, was to be backed to the hilt against trespassers, even where they proved to have had a legitimate stake in the trade. To

this extent, there is evidence for the "definite commercial policy" which Gardiner thought he saw behind such monopolies: the question was whether the administrative structure of the state could sustain such a policy without the severest strain.

As the chief architect of the royal proclamations, the indenture, and the commissions for gold and silver thread, Bacon suffered from a dangerously high profile in 1621. On the strength of Phelips' report, Dudley Digges, to sustained applause, moved in the Commons that a bill be drawn, "the preamble whereof should set forth the king's care to have prevented these things, then a declaration of penalties against those projectors, suitors, and certifiers, that they may be damned to posterity. . . ."[90] In the debate which followed, there were renewed demands for the examination of the referees.[91] Sir John Walter, the attorney general to Prince Charles, alone cautioned that it was best to provide for the future, "but not to look back to the referees, whereby we may draw opposition, and a crossing of the proceedings for hereafter".[92] The committee which on 8 March presented the Lords with the case against Mompesson--for inns, gold and silver thread, and concealments[93]--failed to press the issue, and the next day there were bitter recriminations in the Commons.[94] In expectation of a new conference, the king himself intervened.

James suddenly appeared in the Lords on 10 March, determined to clear the air over the patents and referees. Noting that "because I am the giver of all patents, it cannot but reflect on me",[95] he asked Bacon for a précis of the Commons' charges against Mompesson,[96] and proceeded to

give an accounting of his own actions. The theme was familiar:

> . . . as I have been always a hater of projects and projectors, as those of my Privy Council both upon their honours and consciences can tell you how often I have consulted with them about these things, and showed my dislike and distaste of them. They have been so troublesome to me that neither myself nor those about me could rest in their beds quiet for projectors, as the great back gallery, if it had a voice, could tell. This kind of people and patents makes me odious to my people for they cannot judge of me that hear me not, but by my actions.[97]

Thus, James was prepared to allow Parliament to act against the offending patents and patentees, providing that his prerogative, "as other kings, to recompense",[98] was preserved. Given the ugly mood of the Commons, it was as well to place the Crown unambiguously on the side of reform. Lord Chancellor Bacon and Lord Treasurer Mandeville, for long the outstanding referees, would be left "to answer for themselves and to stand and fall as they acquit themselves, for if they cannot justify themselves, they are not worthy to hold and enjoy those places they have under me."[99] The moment of reckoning had arrived: for his part, the king was ready to cut adrift even his closest advisers in order to avert a constitutional confrontation.

Bacon, in this delicate situation, rose to protest his own honest dealing in the matter of the patents. He asserted that he had been "so far from suffering things to pass hands over heads that I have taken the boldness to stay many patents at the seal until I have attended your Majesty to know your gracious pleasure. . . ."[100] But Bacon plainly was on the defensive. There were the best reasons for assuming his complicity in Mompesson's offenses; the appeal to the king was only too transparent. Nor was the Lord Chancellor well-advised in directly challenging Coke,

his arch-enemy, as the instigator of his misfortune.[101] In fact, the king's speech had telegraphed a major political realignment and Bacon, perhaps without realizing it, was condemned to a kind of limbo. When the two Houses met again on the afternoon of 10 March, the Lords refused to sanction his speech in his own defence.[102] Thereafter, particularly with the defection of Buckingham,[103] Bacon's influence in the upper House ebbed away--his exclusion from the committees on the Commons' grievances[104] left him at the mercy of events.

Encouraged by the sympathetic response of the king, the Commons continued to probe into the royal patents. As evidence of how far the House had outgrown the limited assumptions of 1601, Coke on 12 March introduced a bill "against monopolies and dispensations of forfeitures of penal statutes",[105] directing that all such patents be examined in the courts and threatening projectors with Praemunire.[106] The bill declared "all grants, liberties, faculty, licences of forfeitures, all proclamations upon them, and warrants for them of assistance, charters, commissions, etc. to be ever hereafter void. . . ."[107] The institutional framework of the patents--so closely associated with the state--was found especially repugnant. Thus, for example, in the case of gold and silver thread,

> the patentees had commission to hear and determine in their own persons or by their officers, besides a warrant dormant to force justices of the peace, mayors and bailiffs of corporations to assist their will for any execution in that trade. In sum, it was most vilely executed both for wrongs done to mens' persons and for abuse in the stuff. . . . Thus the king was wronged by these patents in his wisdom and judgment, the commonwealth in her good government, and the subjects in their goods and liberties.[108]

The point was that, for the thread, an arbitrary authority, not unlike a

court, had been raised up. As Heneage Finch, the Recorder of London, observed, such institutions were dependent upon proclamations, "which should be used only in matters of state".[109] The distinction between "matters of state" and the private interests of the patentees was fundamental to the Commons' argument.[110]

Professor Foster has pointed out that while the House was not always careful to differentiate defects in the original from abuses in the execution of a patent, it "considered both . . . in legal terms and condemned them on legal grounds".[111] Patents against the common law or precedent were obvious grievances in themselves. Patents might be grievances in execution "if illegal acts were committed in their enforcement, or if the provision for enforcement was in itself illegal". Following these criteria, the Commons in March, 1621, instituted proceedings[112] against a range of patents, including those for the sole engrossing of wills, for licencing pedlars, and for pardoning offenders against the Statute of Artificers. It did not escape the notice of the House that Bacon had acted as a referee upon each of these patents.[113]

Sir Robert Flood's franchise for engrossing wills was characteristic of a class of patents of administrative office justified by the Crown as expedient in imposing order on a notoriously chaotic bureaucracy. Thus, for example, in Bacon's own court of Chancery, patents had been granted for the registration of all affidavits and oaths, for auditing accounts, and for "general remembrance of matters of records"[114]--each office ostensibly to supply some lack in the administrative structure of the court. Similarly, Flood's patent for wills rehearsed the failings

of the "careless and inexperienced" clerks and scriveners in the courts of Canterbury and York, and bound the patentee "to make exact and perfect writings, sealed with individual and public seals", upon set fees.[115] Yet the erection of such new offices, however sound in theory, infuriated established office-holders, who naturally feared for their ancient "liberties" and revenues. And the Commons was sympathetic--there was a prevailing suspicion of projectors who secured patents purely from motives of plunder and exacerbated the very problems of inefficiency and inflated fees which they claimed to combat. Flood, himself an M. P., sought to assuage these doubts:

> In defence of his office. That he was neither projector nor petitioner. The king's end was to avoid the extortion of the proctors [of the prerogative courts]. The certificate of the referees made him confident in the course. The proctors confessed it would lose them 10,000l. a year. That he should not get 1,000l. So the subject would save 9,000l. The proctors maintain it did belong to them, and would have a fee though the party did write it himself.[116]

Nevertheless, Coke and Noy agreed that Flood's patent was "against the liberty of the people" in that, legally, anyone had the right to engross a will.[117] The appeal to the referees was debunked by Noy: "For that it is urged that two great men [Bacon and Mandeville] did certify both of the lawfulness and the convenience, I say if the certificate of two men shall make a law, we need not a Parliament."[118] Finally, the patent was adjudged a grievance of the House, and Flood was expelled as a projector.[119]

In like manner, though there were reasonable arguments in their favour, both the patent for an office for licencing pedlars and that for pardoning offenders against the Statute of Artificers were condemned in Parliament as illegal.[120] For the first, it had been observed that an

Elizabethan penal law (39 Eliz. c. 4) included pedlars in the class of rogues and vagabonds, "whereas it was an ancient and useful trade". The new office was empowered to licence worthy pedlars, upon the certificate of two justices of the peace and the bond of two sureties.[121] But in 1621 the Commons found that this dispensation of the statute inevitably constituted "an encouragement to rogues, that by these means might be secure from the penalty; a discouragement to honest men that followed their professions".[122] In the same way, whereas the Statute of Artificers (5 Eliz. c. 4) made it unlawful to exercise a trade without an apprenticeship of seven years, many established tradesmen had not been properly apprenticed and remained liable to the full penalties of the Statute. The commission that was set up to compound with these tradesmen for their pardons, at such reasonable rates as the commissioners thought fit,[123] was damned in the Commons as liable to entail the corruption of the whole scheme of apprenticeship.[124] In short, dispensation of penal laws by patent, however well-intentioned, was seen as a grievance in itself--manifestly inviting abuse in the execution.

The Commons conceived similar legal objections against numerous other franchises--the discontent was broad-based.[125] And, though the charges against the Lord Chancellor took priority after 15 March,[126] the House continued to follow up complaints concerning patents until the adjournment in June. Still, the high-point undoubtedly was reached on 26 March when the king, in an extraordinary speech in the Lords, promised a proclamation revoking the trio of patents for inns, alehouses, and gold and silver thread:

> For I confess I am ashamed, these things proving so as they are generally reported to be, that it was not my good fortune to be the only author of the reformation and punishment of them by some ordinary courts of justice. Nevertheless since these things are now discovered by Parliament, which before I knew not of, nor could so well be discovered otherwise in regard of that representative body of the kingdom which comes from all parts of the country, I will be never a whit the slower to do my part for the execution.[127]

This admission, and the proclamation duly forthcoming on 30 March,[128] were impressive testimony of the extent of the reformers' tactical victory over the Crown. Yet almost certainly it was the Commons' very success in checking the pretensions of projectors which served to defuse the even more explosive issue of the referees. In the end, the referees were never made to answer to Parliament for their part in the offending patents, though much of the blame was assigned to them. Leading reformers like Coke and Noye tacitly acknowledged that the law of diminishing returns was likely to apply to any further escalation in the policy of confrontation with the king. With Bacon already in the throes of the bribery case, the time obviously had come to ease back on the dangerous question of the referees' accountability. Moreover, strong legislation was in the works to consolidate what gains had been made and to provide for the future--the central bill against monopolies; a bill for reviving the "true and necessary use" of writs of ad quod damnum;[129] and a bill "for the better securing the subjects from wrongful imprisonments and deprivation of their trades and occupations contrary to the 29 cap. of Magna Carta".[130]

If, finally, the House of Commons was content to stop short of the great men who had certified the legality and convenience of the patents,

nevertheless the political ramifications of the reform movement were devastating for Bacon. After Buckingham, whose nearness to the king may have sheltered him, it was the Lord Chancellor upon whom the worst-conceived grants recoiled. His own belated attempts to jettison some of them in late-1620 were all too plainly calculated to propitiate Parliament, and scarcely excused his chronic inability to draw the line in passing suits. Of course, Bacon could claim with some reason that his intentions had been of the best--like the king's, "no other but the increase of profitable arts and inventions, the repressing of vice and disorder, and reformation of sundry enormities and abuses. . . ."[131] In those terms, the issue might be seen as the opposition of two competing economic theories: roughly, Bacon's notion of an ordered economy under the king, as against Coke's primitive "economic liberalism" founded on the common law.[132] Yet there is surely something unreal in this argument; it conveniently overlooks the facts of Jacobean patronage--venality of place, pluralities, peculations, and widespread racketeering. The Lord Chancellor, whatever his theoretical justification, was notorious as the sponsor of this system,[133] if not the outright accomplice of Mompesson and Michell. Complaints of arbitrary imprisonment, illegal seizure of goods, threatened Star Chamber proceedings, and so on, inevitably were brought home to Bacon. He simply could not evade his responsibility for the unmistakable pattern of abuses, both in the creation of patents and in their execution. It is hardly surprising that after the deluge of March, 1621, the king found him expendable. Specific charges of corruption as a judge were the immediate occasion of his removal from office, but in a sense this

only confirmed the verdict of the inquiry into the patents. It was as a kind of political pariah that Bacon ultimately chose to waive his defence in the Lords and resigned himself to his fate.

FOOTNOTES--CHAPTER II

[1]Chamberlain to Carleton, 14 October, 1620, The Letters of John Chamberlain, ed. N. E. McClure (Philadelphia, 1939), ii, p. 321.

[2]S. R. Gardiner, "On Four Letters from Lord Bacon to Christian IV", Archaeologia 41 (1867), p. 227. See, for example, H. G. Fox, Monopolies and Patents (Toronto, 1947), for a recent appraisal.

[3]E. Coke, The Third Part of the Institutes of the Laws of England 5th ed. (London, 1671), cap. lxxxv, p. 181. There is a problem in usage here: "monopoly" was a catch-all term applied by contemporaries to an assortment of different privileges, usually in a pejorative sense. See L. C. Knights, Drama and Society in the Age of Jonson (London, 1962), pp. 67-79.

[4]See E. Coke, The Eleventh Part of the Reports (London, 1727), fols. 86a - 86b. Arguments of counsel in the case are excerpted in Fox, Monopolies and Patents, Appendix I, pp. 311-313.

[5]11 Co. Rep., fol. 86b.

[6]The principle was enshrined in the 1624 Statute of Monopolies, 21 James I, cap. 3, section V, which distinguished grants for "the sole working or making of any manner of new manufacture within this realm, to the first and true inventor or inventors of such manufactures which others at the time of making of such letters patents and grants did not use, so they be not contrary to the law nor mischievous to the state, by raising of the prices of commodities at home, or hurt of trade, or generally inconvenient. . . ." Printed in W. H. Price, The English Patents of Monopoly (Cambridge, Mass., 1913), Appendix A, pp. 137-138.

[7]11 Co. Rep., fol. 86b.

[8]Ibid., fols. 84b - 88b. See also the reports of Noy and Moore, printed in J. W. Gordon, Monopolies by Patents (London, 1897), pp. 193-232.

[9]The Council to Lord Chief Justice Anderson and other judges of the Common Pleas, 7 October, 1601: "Turner, a citizen of London, having commenced a suit in that court wherein the validity of a patent to Edward Darcy about playing cards is called in question, the queen wishes you to understand that her prerogative royal may not so be called in question. You are therefore to stay the suit till informed of her further pleasure." Calendar of State Papers, Domestic Series, 1601-1603, p. 108. See also Acts of the Privy Council, New Series, xxxi, 1600-1601, pp. 346-348.

[10]Cited in J. E. Neale, Elizabeth I and her Parliaments 1584-1601 (London, 1965), p. 355.

[11]20 November, 1601, The Letters and the Life of Francis Bacon, ed. J. Spedding (London, 1861-1874), iii, p. 27.

[12]Ibid.

[13]Ibid., pp. 27-28.

[14]21 November, 1601, Ibid., p. 29.

[15]Proclamation reforming patents, 28 November, 1601, in Tudor Royal Proclamations, ed. P. Hughes and J. Larkin (New Haven, 1969), iii, pp. 235-238.

[16]30 November, 1601, quoted in Neale, Elizabeth I and her Parliaments 1584-1601, p. 390. The queen averred that she had "never put my pen to any grant but that, upon pretext and semblance made unto me, it was both good and beneficial to the subject in general, though a private profit to some of my ancient servants who had deserved well at my hands". Ibid., pp. 389-390.

[17]Proclamation "inhibiting the use and execution of charter or grant made by the late Queen Elizabeth, of any kind of monopolies . . .", 7 May, 1603, in Stuart Royal Proclamations, ed. J. Larkin and P. Hughes (Oxford, 1973), i, pp. 11-12.

[18]"An open placard concerning the causes of suitors to his Majesty . . .", 30 May, 1603, in Price, English Patents, p. 25 n. 4.

[19]King James I to Sir John Herbert, Sir Julius Caesar, et al., 28 February, 1609, H. M. C., Calendar of the MSS of the Most Honourable the Marquess of Salisbury, xxi, 1609-1612 (London, 1970), p. 23.

[20]Gardiner calculated that from all the patents together "the Exchequer was not the richer by so much as the modest sum of 9001. a year". S. R. Gardiner, History of England . . . 1603-1642 (London, 1908), iv, p. 21 and note.

[21]Petition of Grievances, 7 July, 1610, in Proceedings in Parliament 1610, ed. E. R. Foster (New Haven, 1966), ii, pp. 268-269.

[22]Ibid., p. 271. The Petition made reference to the "Case of Penal Statutes" (1605), in which it was held by all the judges that Elizabeth I's grant of the penalty and benefit of a penal statute, with power to dispense with the statute, was "utterly against law". Gordon, Monopolies by Patents, Appendix II, p. 232.

[23]King James I, A Declaration of his Majesty's royal pleasure, in that sort he thinketh fit to enlarge or reserve himself in matter of bounty (London, 1610), p. 13.

[24]Ibid., p. 14.

[25]Chamberlain to Carleton, 8 July, 1620, The Letters of John Chamberlain, ii, p. 310. Commons Debates 1621, ed. W. Notestein et al. (New Haven, 1935), vii, Appendix B, Part I, "Schedules of Grants", lists 99 patents in force in 1621, covering a wide range of matters and frequently citing Bacon as a referee. It is unlikely that this list is exhaustive.

[26]See W. J. Jones, "Ellesmere and Politics, 1603-1617", Early Stuart Studies, ed. H. S. Reinmuth (Minneapolis, 1970), pp. 11-63. Chamberlain thought that a melancholy, "between sick and sullen", kept Ellesmere from sealing the two patents to Mompesson, for licensing inns and selling woods, in March, 1617. The king, "seeing all things of that nature to stand still by reason of [Ellesmere's] sickness", was forced to intervene. Chamberlain to Carleton, 8 March, 1617, Letters of John Chamberlain, ii, p. 59.

[27]See Spedding, Letters and Life, vi, passim. On being raised to the Keepership, Bacon wrote to Buckingham "that in this day's work you are the truest and perfectest mirror and example of firm and generous friendship that ever was in court. And I shall count every day lost, wherein I shall not either study your well doing in thought, or do your name honour in speech, or perform you service in deed". 7 March, 1617, Ibid., p. 152. It is interesting to note that in an earlier letter of advice to the favourite, to which no exact date can be assigned, Bacon urged that "especially care must be taken, that monopolies, (which are the canker of all trades), be by [no] means admitted under the pretence or the specious colour of the public good." Ibid., p. 49.

[28]Bacon's speech on taking his seat in Chancery, 7 May, 1617, Ibid., p. 184.

[29]Ibid., pp. 188-189. The sixth case cited by Bacon concerned grants of pardons for treason, murder, and so on: these were to be stated as a matter of course to allow the king to resolve "how far grace shall abound or superabound". Ibid., p. 189.

[30] Ibid., p. 188.

[31] Bacon's speech in Star Chamber, 10 November, 1620, Letters and Life, vii, p. 138. In his notes on Yelverton's case, dated 24 October, 1620, Bacon observed that "the great seal, the privy seal, signet, are solemn things; but they follow the king's hand. It is the bill drawn by the learned counsel and the docket, that leads the king's hand". Ibid., p. 134.

[32] Yelverton was sentenced to loss of place, a 4,0001. fine, and imprisonment during pleasure. Ibid., p. 140. The hostility of Buckingham may have made him expendable. See Gardiner, History of England, iv, pp. 22-23. Chamberlain reported that Yelverton's friends gave out "that his greatest fault is that he is not, nor seeks to be in favour with the favourite". Chamberlain to Carleton, 29 April, 1620, Chamberlain Letters, ii, p. 302.

[33] Besides Bacon, the commission included Coke, the two Chief Justices, Hobart and Montagu, and the last Speaker of the House of Commons, Sir Randolph Crewe. Letters and Life, vii, p. 114.

[34] In a letter to Carleton, dated 28 October, 1620, Chamberlain commented on the prospect of a Parliament: "For mine own part, I cannot perceive any good either way, for impositions and patents are grown so grievous that of necessity they must be spoken of; and the prerogative on the other side is become so tender (like a noli me tangere it cannot endure to be touched: many new patents come forth and more daily expected. . . ." Chamberlain Letters, ii, p. 323.

[35] Bacon et al. to Buckingham, 29 November, 1620, Ibid., pp. 145-148. The Book of Bounty reserved "all debts and accompts accrued since the 30th year of Queen Elizabeth" to the Crown, but letters patents dated 7 November, 1618, granted to Edward Duncombe and others the right to recover "anything due from 20 Elizabeth I to 10 James I and not now in charge before any of the auditors". James I, A Declaration . . . [Book of Bounty], p. 16; and Commons Debates, vii, Appendix B, "Grants", p. 414. There were a number of commissions for passing or leasing of "concealments, intrusions, encroachments, lands out of charge, and other lands of like nature"; see Commons Debates, vii, "Grants", pp. 343-347, 350-355. Defective titles were reserved to the conscience of the king by the Book of Bounty. James I, op. cit., p. 15.

[36] Letters and Life, vii, p. 147.

[37] Ibid. The commissioners conceded that there were "many more, of like nature but not of like weight, nor so much rumoured, which to take away now in a blaze will give more scandal that such things were granted than cause thanks that they be now revoked."

[38] Bacon to Buckingham, 29 November, 1620, Ibid., p. 148.

[39] Ibid., p. 149. Bacon did go on to say, nevertheless, that he was willing to be guided by Buckingham's judgment in the matter--it was dangerous to presume too much on the favourite's good-will.

[40] See Bacon to Buckingham, 16 December, 1620, Ibid., pp. 151-152.

[41] Ibid., p. 152.

[42] The patent, to Sir Robert Flood, was certified for legality and "convenience" by Bacon, Naunton, and Montagu. Commons Debates, vii, Appendix B, "Grants", p. 469. Nevertheless, Chamberlain reported the innovation raised "a great clamour among the proctors [of the courts] against Kit Villiers, who is to have the benefit". 28 October, 1620, Chamberlain Letters, ii, p. 323.

[43] Commons Debates, ii. p. 12.

[44] 6 February, 1621, Commons Debates, iv, pp. 19-20. The suggestion came, guilelessly, from Sir Edward Sackville, a man associated with the government interest: he may not have appreciated how serious the implications were for Bacon. Cranfield took up the theme on 15 February: "If the referees be in fault, can [the king] do himself more honour than call them to account?" Commons Debates, ii, p. 90. The king was being given the opportunity to exculpate himself, but at a price--the theme recurs throughout the Parliament.

[45] 19 February, 1621, Commons Debates, iv, p. 78; see also Proceedings and Debates of the House of Commons in 1620 and 1621, ed. E. Nicholas (Oxford, 1766), i, pp. 63-64.

[46] Commons Debates, iv, pp. 79-81; vi, pp. 250-251. Coke noted, for example, that "Queen Elizabeth granted many monopolies but called them in; propter importunibus multoties, rex concedit non propter, like a clock which again tells the time past, not to come".

[47] 20 February, 1621, Commons Debates, ii, p. 108.

[48] Ibid. Coke observed that "if these did certify if, no king in Christendom but would have granted it. Therefore his Majesty is free from all blame in it". Ibid.

[49] As an illustration of Bacon's working assumptions, it is worth quoting a letter, Bacon to Buckingham, 13 November 1616: "Now that the king hath received my opinion, with the Judges' opinion unto whom it was referred, touching the proposition for inns in point of law; it resteth that it be moulded and carried in that sort, as it may pass with best contentment and conveniency. Wherein I that ever love good company, as I was joined with others in the legal point, so I desire not to be alone in the direction touching the conveniency. And therefore I send your Lordship a form of warrant for the king's signature, whereby the framing of the business and that which belongeth to it may be referred to myself with Serjeant Montagu and Serjeant Finch. . . ." Letters and Life, vi, p. 99.

[50] Letters patent to Mompesson, Bridges and Thurbarne, 3 March, 1617, Commons Debates, vii, pp. 379-380. This was one of the patents which was held up by Lord Chancellor Ellesmere's final illness. See Chamberlain Letters, ii, p. 59.

[51] Ibid., pp. 380-381. Licences still had to be signed by Justices of Assize as a matter of course, and for fixed fees. Ibid., pp. 381-382.

[52] S. R. Gardiner, "On Four Letters from Lord Bacon to Christian IV . . .", Archaeologia 41 (1867), p. 236.

[53] Grant, 19 March, 1617, Commons Debates, vii, p. 386.

[54] 21 February, 1621, Commons Debates, iv, pp. 85-86; ii, pp. 112-113; see also, v, p. 476. In his mea culpa before the Lords on 30 April, 1621, Yelverton, the fallen Attorney General, bitterly denounced Mompesson and Buckingham for involving him in the quo warrantos for inns: ". . . Mompesson said he had a message to me from Lord Buckingham that I should not hold my place a month if I did not better conform myself in these matters of inns; whereby he thought this was a great part of regal power assumed to place and displace officers. This staggered me, for if Sir Giles Mompesson said true in this message, which I fear will be too truly proved, you shall see I was in a straight whether to obey the king or Buckingham". Notes of Debates in the House of Lords . . . 1621, ed. S. R. Gardiner, Camden Society Old Series, 103, (London, 1870), p. 47. Yelverton claimed to have told the king that the quo warrantos would be "an ill preparation to a Parliament", and to have allowed only two out of thousands to come to trial. Undoubtedly, this testimony was self-serving: the fact that only two quo warrantos were prosecuted is the best indication that the victims found it cheaper to compound with Mompesson--as he expected they would.

[55]Commons Debates, iv, p. 85.

[56]21 February, Commons Debates, ii, p. 113.

[57]25 January, 1618, Letters and Life, vi, p. 294. In the event, Bacon and Montagu agreed to pass the patent. Commons Debates, vii, p. 317.

[58]Grant to Dixon and Almond, 11 March, 1618, Commons Debates, vii, Appendix B, "Grants", p. 313.

[59]"This patent is granted unto Mr. Dixon, one of this Lord Treasurer's secretaries, and to one Mr. Almond, servant to this Lord Chancellor; but only for the use of Sir James [Spence], Mr. Christopher Villiers, Sir Robert Maxwell, and Mr. Maule, all courtiers; and for their sole profit and behoof." 21 February, 1621, Proceedings and Debates, i, p. 75.

[60]Commons Debates, vii, p. 315.

[61]See, for example, evidence of the Privy Council's vigilance: Acts of the Privy Council 1616-1617 (London, 1927), pp. 154, 308; A. P. C. 1617-1619 (London, 1929), pp. 33-34; A. P. C. 1619-1621 (London, 1930), pp. 166, 202-203. There were a series of statutes touching drunkenness, the sale of beer, alehousekeepers, and so on: 1 Jac. I c. 9; 4 Jac. I c. 4, c. 5; and 7 Jac. I c. 10.

[62]17 May, 1619, Commons Debates, vii, p. 321.

[63]"A Proclamation concerning Alehouses", 19 January, 1619, Stuart Royal Proclamations, i, pp. 409-413.

[64]21 February, 1621, Proceedings and Debates, i, p. 76.

[65]Cranfield scornfully opposed an attempt to spare Kit Villiers. 22 February, 1621, Commons Debates, ii, pp. 122-123; vi, p. 262.

[66]Though he was unconnected with the patent, Michell was found to have been "the chief counsellor and secretary in directing all". Commons Debates, iv, 91; ii, 123.

[67]22 February, 1621, Commons Debates, iv, p. 89.

[68]Petition of Francis Michell, Commons Debates, vii, p. 500.

[69]Mr. Tite concludes that the Commons' jurisdiction to punish Michell's wrong-doing in the alehouse patent was dubious, though the claim apparently was made. It was later asserted that Michell had been committed for contempt of the House, which seems more sensible. C. G. C. Tite, Impeachment and Parliamentary Judicature in Early Stuart England (London, 1974), pp. 91-92. There is the further observation that Michell's sentence "perhaps bears some similarity to the medieval notion of conviction by notoriety". Ibid., p. 91 n. 24.

[70]27 February, 1621, Commons Debates, iv, p. 110; ii, p. 145.

[71]See Tite, Impeachment and Parliamentary Judicature, pp. 83-148.

[72]26 February - 2 March, 1621, Commons Debates, v, pp. 520-521; vi, pp. 12-13, 25-26; iv, pp. 107, 110-111, 121-122. The playwright Massinger traded on Mompesson's notoriety in the play A New Way to Pay Old Debts, (1633), though "Sir Giles Overreach" has little enough in common with the original. The description of the courtier Fitton in Ben Jonson's The Staple of News more aptly characterizes Mompesson: "a moth, a rascal, a court rat, that gnaws the commonwealth with broking suits, and eating grievances". (IV, iv, 142-144.)

[73]27 February, 1621, Commons Debates, ii, p. 147. Chamberlain was unimpressed: ". . . there be many glances and aspersions upon the referendaries [sic] who gave way and certified of the lawfulness or conveniency of these patents, but they are for the most part such as are like to be out of their reach." Chamberlain to Carleton, 27 February, 1621, Chamberlain Letters, ii, p. 347.

[74]27 February, 1621, Commons Debates, ii, p. 147.

[75]3 March, 1621, Commons Debates, v, p. 270. Coke was sent to the Lords to request a full-dress conference on Mompesson, who had escaped from custody: "Sir Edward Coke said that Empson and Dudley were fools to this projector. True, said the Marquis [Buckingham], for they stood to it and were hanged, but Sir Giles hath taken his heels." Commons Debates, ii, p. 161.

[76]Yelverton's testimony, 30 April, 1621, Notes of Debates in the House of Lords, ed. Gardiner, Camden Society Old Series, 103 (1870), p. 44. See also Commons Debates, vii, Appendix B, "Grants", p. 364.

[77]"A Proclamation for reforming the abuses in making of gold and silver thread within this realm, and for the inhibiting the importation thereof . . .", 22 March, 1618, Stuart Royal Proclamations, i, p. 385. The "scarcity of money", a frequent complaint of contemporaries, was linked with coinage and bullion. See B. E. Supple, "Currency and Commerce in the Early Seventeenth Century", The Economic History Review, 2nd ser., 10 (1957), pp. 239-255. The issue was debated in the 1621 Parliament; see, for example, Commons Debates, iv, pp. 19-20, 104-106, 112-113, 149-150.

[78]Proclamation, 22 March, 1618, Stuart Royal Proclamations, i, p. 385.

[79]Commons Debates, vii, p. 366.

[80]11 April, 1618, Ibid.

[81]Commission to Lord Bacon, Lord Treasurer Suffolk, et al. [including Francis Michell], 22 April, 1618, printed in Gardiner, "On Four Letters . . .", Archaeologia 41 (1867), pp. 251-253.

[82]In July, 1618, Fowle complained to the king that the great men were inattentive, and Bacon was asked to overhaul the commission. See Fowle's petition, in M. A. Abrams, "The English Gold- and Silver-Thread Monopolies, 1611-1621", Journal of Economic and Business History 3 (1930-1931), pp. 389-394. The new commission, dated 20 October, 1618, was easily dominated by Mompesson and Michell. Gardiner, "On Four Letters . . .", Archaelogia 41, pp. 256-258. The king, for his part, had doubts and again referred the matter to Bacon, Montagu, and Yelverton, who reassured him that it was both convenient--"being a means to set many of your poor subjects on work"--and likely to generate 10,000l. a year for the Crown. Bacon et al. to the King, ? October, 1618, Letters and Life, vi, p. 340.

[83]Report of Phelips, from the committee for the examination of Yelverton and Michell, 5 March, 1621, Commons Debates, ii, pp. 164-167; iv, pp. 126-128; vi, p. 271; see also Proceedings and Debates, i, pp. 124-127.

[84]See Abrams, "Monopolies 1611-1621", J. E. B. H. 3, pp. 382-406; and Commons Debates, ii, pp. 164-167.

[85]Abrams, op. cit., p. 395.

[86]Examination of Yelverton, 5 March, 1621, Commons Debates, ii, p. 166. The date of the incident in question is nowhere specified; on this problem see Spedding, Letters and Life, vii, pp. 206-207.

[87]Report, 5 March, 1621, Proceedings and Debates, i, p. 126.

[88]"A Proclamation for the better settling of his Majesty's manufacture of gold and silver thread within this his realm", 19 October, 1619, Stuart Royal Proclamations, i, pp. 441-446.

[89]Spedding, Letters and Life, vii, p. 206. See also Commons Debates, vi, p. 213.

[90]5 March, 1621, Commons Debates, ii, p. 167.

[91]Ibid., pp. 168-169. Sir Hamon L'Estrange was at his metaphorical best: "These the Jezebels that lie in the ears of kings, worms that breed the crudities of ill-digestions. Away with Achitopels, the king needeth not their counsel." Commons Debates, vi, p. 272.

[92]5 March, 1621, Journals of the House of Commons, i, p. 539.

[93]The fullest account of this conference is in Commons Debates, ii, pp. 179-199.

[94]Sir Thomas Roe, for example, complained that "after three weeks we brought forth a mouse instead of a mountain." Commons Debates, vi, p. 284. The offenders were Crewe, Finch, and Hakewill, who spoke on the grievances of inns, gold thread, and concealments respectively. In their defence, it was held that there had been inadequate preparation in the House. Commons Debates, ii, pp. 200-202; vi, pp. 45-48. It is worth noting that in a letter to Buckingham on 7 March, Bacon had foreseen that the conference was "like to pass in a calm, as to the referees", since "almost all men of judgment in the House" had come over to Sir John Walter's way of thinking. Thus, the only worry was Coke—though "a word from the king mates him." Letters and Life, vii, p. 192. This kind of political miscalculation may be an indication of how far Bacon was out of touch with the Commons.

[95]Notes of Debates in the House of Lords. . . . A. D. 1621-1628, ed. F. H. Relf, Camden Society, 3rd series, xlii (London, 1929), p. 12.

[96]The Lord Chancellor clearly was disconcerted; he "spake so low he was not well to be heard". Ibid., p. 13.

[97] The Hastings Journal of the Parliament of 1621, ed. E. de Villiers, Camden Miscellany, xx (London, 1953), p. 26.

[98] Lords Debates, ed. Relf, Camden Society, 3rd series, xlii, p. 14.

[99] Hastings Journal, p. 27.

[100] Ibid., p. 30.

[101] Bacon assured the king that ". . . for all my Lord Coke hath said, I hope in future ages my acts and honesty shall well appear before his and my honesty over balance and weigh his and be found heavier in that scale." Ibid.

[102] At this conference, the Commons' committee formally named the referees; both Bacon and Mandeville spoke, out of turn, to excuse their actions. "Sir Edward Coke asked the Lords if the apology of the Lord Chancellor and Treasurer were the vote of the House. The Lords answered no, and said that they had found those things to be grievances in their beginning and execution." Commons Debates, ii, p. 207. See also Journals of the House of Lords, iii, p. 42.

[103] The Dean of Westminster, John Williams, at about this time advised Buckingham that Mompesson and Michell might "be made victims to the public wrath": "But your Lordship is jealous, if the Parliament continue embodied in this vigour, of your own safety, or at least of your reputation, least your name should be used and be brought to the bandy. Follow this Parliament in their undertakings and you may prevent it; swim with the tide and you cannot be drown'd. They will seek your favour; (if you do not start from them) to help them to settle the public frame, as they are contriving it. Trust me and your other servants, that have some credit with the most active members, to keep you clear from the strife of tongues. But if you assist to break up this Parliament, being now in pursuit of Justice, only to save some cormorants who have devoured that which must be regorged, you will pluck up a sluice which will overwhelm yourself. The king will find it a great disservice before one year expire. The storm will gather and burst out into a greater tempest in all insequent meetings. For succeeding Parliaments will never be friends with those with whom the former fell out." Printed in J. Hacket, Scrinia Reserata, (London, 1693), p. 49. It was almost certainly this assessment which moved Buckingham to announce to a conference of both Houses, on 13 March, that he would not intervene to protect his brothers if their turpitude was established. Proceedings and Debates, i, p. 150. The favourite's own leading part in the patents went largely unquestioned in Parliament.

[104] Journals of the House of Lords, iii, pp. 46-47.

[105] Commons Debates, ii, p. 210 n.

[106] Commons Debates, v, pp. 289-290. The contents of the bill are in Notes of Debates in the House of Lords, ed. Gardiner, Camden Society Old Series, 103 (1870), pp. 151-155. On second reading, Hakewill objected that the bill would have monopolies tried in "no other but court of record", which appeared to exclude Parliament's right. 14 March, 1621, Commons Journals, i, p. 553. Coke replied that "for the Parliament, who denies that it is a court of record at Westminster?" Commons Debates, ii, p. 219.

[107] 14 March, 1621, Commons Debates, ii, p. 218.

[108] Undated, Commons Debates, vi, p. 379. The warrant dormant, addressed to "all mayors, justices of the peace, aldermen, shreives, constables . . .", was authority to attach persons and search premises for illicit goods and tools. Bearing the signatures of Bacon and other leading officers, it was a highly potent weapon in the hands of the patentee. In a cause célèbre, Attorney General Yelverton was seriously compromised by one such warrant under his hand which mysteriously bore no date and authorised the "bearer". See Notes of Debates in the House of Lords, ed. Gardiner, Camden Society, Old Series, 103 (1870), p. 44.

[109] 14 March, 1621, Commons Debates, ii, p. 220. Coke echoed this theme in a debate on monopolies and trade: ". . . when a man can give no reason for a thing, then he flieth to a higher strain, and saith it is a reason of State." 24 April, 1621, Proceedings and Debates, i, p. 308.

[110] Coke's bill was later amended to exempt materials of vital importance to the national interest, like saltpeter and iron ordnance. 26 March, 1621, Commons Debates, iv, p. 197.

[111] E. R. Foster, "The Procedure of the House of Commons against Patents and Monopolies, 1621-1624", Conflict in Stuart England: Essays in Honour of Wallace Notestein, ed. W. A. Aiken and B. D. Henning (London, 1960), p. 74.

[112] In Mrs. Foster's view, "the Commons had, in fact, evolved out of the old private Bill procedure a method of investigation and of passing judgment very like a court procedure." She also noted that the calling in of the patents and related documents by the committee for grievances amounted to suspension of the grant pending the judgment. Ibid., pp. 75, 68 n.

[113]For details of these patents, see Commons Debates, vii, Appendix B, "Grants", pp. 469-471; 418-419; 327-329.

[114]Ibid., pp. 311; 330-331; 362. See below, chapter III, "Bacon and Chancery Reform". See also, for example, Lepton's patent of making and writing all process called the King's letters . . . concerning any matter or cause in the court of the Council in the North." Commons Debates, vii, pp. 394-395.

[115]Letters patent, 30 December, 1620, Commons Debates, vii, p. 470. See also a paper "Reasons for the erection of the office for wills", Ibid., pp. 507-508.

[116]21 March, 1621, Commons Debates, iv, pp. 178-179.

[117]21 March, 1621, Commons Debates, ii, pp. 250-251, 254. Coke cited the case of the Merchant Taylors, Davenant v. Hurdis, from which he concluded that "though it were by a patent you cannot restrain a subject but he may go to whom he will." Ibid., p. 251.

[118]Ibid., p. 254. Noy also rejected the notion that Flood's appointment by the king was legal to the extent that it involved the administration of justice: "I answer it's not a judicial act but a testimony conducing to a judicial act as all other evidence is." Ibid., p. 255. The danger was that "upon like wise pretences", similar offices might be erected for the engrossing of "all bonds, evidences, indentures, etc., especially of indentures of bargain and sale, which were afterwards to be enrolled. . . ." Commons Debates, vi, p. 460.

[119]Ibid., pp. 460-461.

[120]See Commons Debates, vi, pp. 311, 315.

[121]Letters patent, 29 March, 1617, Commons Debates, vii, Appendix B, "Grants", p. 418.

[122]Commons Debates, iv, p. 148.

[123]4 February, 1619, Commons Debates, vii, pp. 328-329.

[124]21 March, 1621, Commons Debates, ii, p. 250.

[125]See, for example, commissions for licencing markets and fairs; for compounding with local authorities for the privilege of holding courts leet; for passing or leasing concealed lands; for compounding for the right to make parks and free warrens; for compounding for pardons or dispensations for lands converted from tillage to pasture contrary to statute; and for granting tolls and customs. Details of these grants are in Commons Debates, vii, pp. 411; 393-394; 343-347; 466-467; 449-450; 461-463. All of these patents were revoked by James' "Proclamation declaring his Majesty's grace to his subjects, touching matters complained of as public grievances", 10 July, 1621, Stuart Royal Proclamations, i, pp. 514-515.

[126]This priority was established on a motion of Sir Robert Phelips, 15 March, 1621, Commons Journals, i, p. 554; Commons Debates, iv, p. 160 n.

[127]James I, His Majesty's Speech in the Upper House of Parliament on Monday the 26 of March, 1621 (London, 1621), fol. A4.

[128]"A Proclamation for repeal of certain letters, patents, commissions, and proclamations concerning inns, alehouses, and the manufacture of gold and silver thread," 30 March, 1621, Stuart Royal Proclamations, i, pp. 503-505.

[129]The bill, preferred by Coke on 17 April, was specifically designed to check "untrue suggestions in his Majesty's grants". It provided that, on pain of a 500l. fine, suitors for "any franchise, liberty, privilege, immunity, dispensation, licence, charge, oneration [sic] or any thing or things whatsoever, where in ancient or former times there used to go out any writ or writs of ad quod dammum" were to cause these writs to be duly executed and returned before the patents were sealed. In that way, it might be established in advance that such patents could be granted "without any damage or prejudice of the king's Majesty, his heirs or successors, or of the Commonwealth, and without damage, charge, or grievance of any of the subjects of this realm. . . ." Commons Debates, vii, Appendix A, "Bills", pp. 207-208. The obvious problem with this arrangement was that it applied only to such patents as had been granted in the past.

[130]1st reading, 30 April, 1621, Commons Debates, vi, p. 111.

[131]Proclamation, 30 March, 1621, Stuart Royal Proclamations, i, p. 504.

[132]For a detailed analysis of Coke's use of precedents to connect free enterprise with the common law, see D. O. Wagner, "Coke and the Rise of Economic Liberalism", The Economic History Review 6 (1935), pp. 30-44. Wagner concludes that, insofar as they prove anything about the question, Coke's precedents tend to give the lie to his conclusions and are best interpreted as "propaganda against control". Ibid., p. 44.

[133]Two-thirds of the twenty-one patents revoked by proclamation in 1621 had been certified by Bacon. See Proclamations, 30 March, 10 July, 1621, Stuart Royal Proclamations, i, pp. 503-505, 511-519; and Commons Debates, vii, Appendix B, "Grants".

CHAPTER III

BACON AND CHANCERY REFORM

The charges against Bacon highlighted a larger picture, of a legal system riddled with corruption and inefficiency and beset with excessive litigation. The themes were not new, but at the insistence of a group of outstanding spokesmen in the House of Commons, law reform became a hot political issue in 1621 and would remain a constant talking-point into the Interregnum and beyond.[1] Yet in 1621 the political content of the campaign for law reform was still largely unformed. How far the attack on the court of Chancery represented a disingenuous attack on the Lord Chancellor is problematic--Mr. Zaller, the student of "constitutional conflict", undoubtedly overstates the case in seeing Chancery as the chosen "scape-goat among the courts".[2] In any case, the complaints against the courts in 1621 were in line with the long-standing concerns of litigants, lawyers and government alike.[3] What was new was the mobilization of parliamentary committees and drafting of legislation as of right by a leadership whose connection with the government interest was often tenuous. In that context, the law reform movement, while not yet a comprehensive programme for the overhaul of the courts and the substance of the law, far outstripped the reforming predilections of the king's first minister, Bacon.[4] Chancery, like the Lord Chancellor, was a conspicuous target.

Bacon had succeeded to the great seal, in March 1617, in the aftermath of Coke's failed challenge to the equitable jurisdiction of the court of Chancery. The events of 1616 are well-documented,[5] but too

readily interpreted by constitutional historians as a naked attempt by the common law under Coke, then Chief Justice, to overpower equity. Recent scholarship has undercut this view by emphasizing the degree of unexceptional interaction of common law and equity courts[6]--prohibitions and Praemunire notwithstanding. The immediate issue in 1616 was equity's right to intervene by injunction to stay execution of a judgment at law. The cases of Glanville and Allen, in which Coke preferred Praemunire indictments against parties suing for relief in Chancery after a common law judgment--and against the counsel and court officials involved--certainly had political implications. Bacon himself, as Attorney General, advised James that what was really at stake was the prerogative, identifying Chancery as the court of the king's "absolute power".[7] But the rhetoric on both sides has tended to obscure the fact that the equitable jurisdiction was an indispensable adjunct to the working of the common law, and that its usefulness was not disputed. From this perspective, as C. M. Gray aptly concludes, "the judgments controversy . . . would seem to have been essentially about what it was ostensibly about--one point on which the accommodation between law and equity was by common lawyers' lights unsatisfactory";[8] that is, equitable relief after judgment at law.

To characterize the problem as one of jurisdiction may be misleading. By the seventeenth century, the Chancellor's jurisdiction in equity, founded on the broad principle of "conscience", extended beyond simple cases of fraud and accident to take in trusts, mortgages, partnerships, and a range of other questions in which common law remedies

were defective or lacking.[9] But still more important were the functions of Chancery ancillary to other jurisdictions in implementing the common law itself: discovering evidence for trial, recovering documents, and securing quiet possession of property or restraining waste pending a lawsuit.[10] The nature of its process--particularly the subpoena and injunction--especially fitted equity or English Bill courts for such purposes. Early Stuart equity had developed rules which in some measure determined the kinds of business it handled; it did not necessarily represent an alternate system of law. Thus Yale, for example, appears ill-advised in describing the common injunction as "the main weapon of the Chancery in its struggle for independence in jurisdiction".[11] It is by no means clear that what was at issue in this period was "independence in jurisdiction"--the conception is anachronistic. Coke's contention that equitable relief after judgment "would tend to the subversion of the common law"[12] can be discounted, though there were sound reasons to fear abuse of the power of the injunction.

In the event, the 1616 dispute was referred to Attorney General Bacon and learned counsel, who found

> a strong current of practice of proceeding in Chancery after judgment, and many times after execution . . . it being in cases where there is no remedy for the subject by the strict course of the common law, unto which the Judges are sworn.[13]

The opinion underlined the regularity of the proceeding and the active concurrence of the common lawyers:

> We find that the Judges themselves, in their own Courts, when there appeared unto them matter of equity, because they by their oath and office could not stay the judgments, except it be for some small time, have directed the parties to seek relief in Chancery.[14]

There could be no better proof of Chancery's vital role in "supplying" the common law. The subsequent decree of the king merely reconfirmed the fitness of the arrangement.[15] Equity proverbially followed the law; the principle would be maintained.

Nevertheless, relations between the courts remained ill-defined, and the litigious suitor could be expected to exploit the grey areas. In his opening speech in Chancery, Bacon was at pains to demonstrate his own good faith concerning intervention after judgments at law, declaring that "the power would be preserved, but then the practice would be moderate".[16] He affirmed that, by the king's express charge, he was to "contain the jurisdiction of the court within the true and due limits, without swelling or excess".[17] To this end he offered five guarantees. In the first place, Chancery would not hear matters "merely determinable and fit for the common law", nor would it retain suits after the questions in equity had been decided; the new Keeper observed that Chancery was "ordained to supply the law, and not to subvert the law".[18] The obvious problem was in deciding with any precision which causes were fit to be dismissed to the common law and which might be retained. This decision Bacon claimed he would reserve to himself as sole judge of the court (at least in theory) or to his practical coadjutor, the Master of the Rolls.

Secondly, while Chancery would continue to offer relief from common law judgments on grounds of equity, the complainant would be required to enter into a bond for the proof of his allegations.[19] Frivolous suits were to be discouraged and the court indemnified. Thirdly, the rules for granting injunctions were spelled out. The Keeper would issue no

injunction "merely upon priority of suit" in Chancery; it was not his intention, Bacon declared, "to make it a horse-race who shall be first at Westminster Hall". Nor would injunctions be granted simply in consideration of claims made in the plaintiff's bill, but only upon some solid evidence in the defendant's answer, or "matter pregnant in writing, or of record; or upon contempt of the defendant. . . ."[20] In short, there was to be no suspicion of empire-building by injunction.

The fourth point in Bacon's manifesto concerned the power of the twelve Masters of Chancery, to whom, in the course of proceedings, the Chancellor regularly referred questions of law and practice for expert opinion. If it was plain that "the great mass of the business of the court cannot be sped without them", particularly in view of the multiplicity of interlocutory motions which threatened to bring Chancery to a standstill, nevertheless the Masters were not judges. And Bacon was sensitive to the dangers of making "too many Chancellors, by relying too much upon reports of the Masters of the Chancery as concludent".[21] For his part, he pledged that he would make no summary order on a report without hearing the parties; nor would he continue the practice of making "hypothetical orders", conditional on a Master's report. Yet the fact was that the "rules of equity" were still essentially procedural rather than substantive,[22] and the influence of the Masters was inevitable. No Chancellor judged in a vacuum.

By his fifth and final precept, Bacon acknowledged Chancery's dependency in matters of the substance of the law: in "cases of difficulty", the common law judges would be consulted as a matter of

course, without prejudice to the authority of the court.[23] This was to set the seal on detente, the working accommodation of law and equity upheld in 1616. Indeed the Lord Keeper, at a private dinner for the judges and learned counsel, gave it as his own view that "the former discords between the Chancery and other courts was but flesh and blood; and now the men were gone, the matter was gone. . . ."[24] While no one was likely to forget Bacon's key part in the downfall of Coke, his eagerness to allay the judges' fears of "exorbitant or inordinate" proceedings in Chancery was well-received. After the crankiness and mutual distrust of Lord Chancellor Ellesmere's last years, a new era was in sight.[25]

Within Chancery itself, there was an urgent need for reform. In his inaugural speech to the court, Bacon announced that he was commanded to abate the undue delays and expense involved in Chancery litigation. For the expedition of justice, insofar as the Chancellor could personally effect it, he promised speedy decision after a hearing, foregoing the preparation of breviates upon the case. Interlocutory orders, "nothing tending or conducing to the end of the business", would be held in check: "this is that which makes sixty, eighty, an hundred orders in a cause, to and fro, begetting one another; and like Penelope's web, doing and undoing."[26] The practice was notorious and invited abuse by dilatory suitors. Bacon noted that it was chiefly the excessive length of suits which inflated litigants' costs. There was, too, the sharp practice of clerks and examiners in augmenting their fees through needless prolixity in the drawing up of bills, answers, depositions, and so on. Henceforth, strict adherence to previous directives on the subject would be required,

and care taken "there be no exaction of any new fees, but according as they have been heretofore set and tabled."[27]

Bacon's reform programme was not radically new in substance; his predecessor had attempted to deal with the same shortcomings, only to fall victim to the sheer mass of business which faced the court. Professor Jones has argued that Ellesmere's very success in clarifying Chancery process and institutions has contributed to the problem. The expansion of procedural rules vouchsafed the litigant a wider range of alternatives for action, and this necessarily tended to protract proceedings and so increase costs.

> The number of motions increased alarmingly, and yet it was never possible to assert that prevarication was the major fault. For the court itself provided the rules, and hence it provided opportunities to litigants which were fully legitimate. It was this connexion between "slow process" and "due process" which defeated [Ellesmere], as it defeated others. . . .[28]

Nor were the Masters and other Chancery officials anxious to abbreviate the fullest possible course of motions, examinations, and references, to which their fees were tied.

Even so, Bacon's efforts to curtail drawn-out suits apparently met with some initial success, for he was able to report, in June 1617, that he had cleared off the backlog of outstanding business in Chancery:

> This day I have made even with the business of the kingdom for common justice. Not one cause unheard. The lawyers dry of all the motions they were to make. Not one petition unanswered. And this I think could not be said in our age before.[29]

Six months later, in making the same claim, Bacon boasted that he was deciding twice as many cases as Ellesmere, "besides that the causes that

I dispatch do seldom turn upon me again, as his many times did. . . ."[30] The exact number of suits in Chancery for the period of Bacon's tenure is uncertain, but at the time of his fall he reckoned he was making 2,000 decrees and orders a year.[31] Coke's charge to the Commons in 1621 that 35,000 writs of subpoena issued out of Chancery in a year was contested by Sir Henry Vane, one of the Clerks of the Subpoenas, who declared that the figure never exceeded 16,000, "as the Books do manifest".[32] Vane's estimate, if accurate, is still impressive--an indication of the overwhelming glut of litigation which Chancery attracted. There were recurrent rumours that the fragile state of Bacon's health would prove unequal to the pressures of the place.[33]

In these circumstances, the danger was that certain institutional excrescences would be allowed to grow unchecked and further impair the court's efficiency. By Bacon's time, for example, the office of the Masters of Chancery had evolved out of all recognition from its medieval origins. The administrative responsibilities of the Masters had declined and they had assumed a quasi-judicial capacity, rendering expert assistance to the Chancellor on a range of legal and procedural matters.[34] Indeed their reports were invaluable in charting a course through the welter of pleadings, demurrers, and motions, and in evaluating cases when they came to hearing. Frequently, too, Masters were commissioned to arbitrate, and, while their certificates were subject to the ratification of the court--commissions to hear, determine, and end were regularly granted even to convenient laymen--there was a real question whether the activities of the Masters, taken all in all, did not imply a judicial

competence. Bacon, as has been noted, was openly suspicious of "too many Chancellors", and aimed to reduce the court's dependence on references and reports. Early in his Keepership, he overruled a reference by the Master of the rolls to another Master when it appeared that the reference was upon an injunction which he himself had granted.[35]

The general ordinances "for the better and more regular administration of justice in the Chancery", published in January 1619,[36] included nine articles defining and restricting the role of the Masters. Above all, Bacon was seeking to preserve the integrity of the court:

> No reference upon a demurrer, or question touching the jurisdiction of the court, shall be made to the Masters of the Chancery; but such demurrers shall be heard and ruled in court, or by the Lord Chancellor himself.[37]

Masters were not to usurp the Chancellor's jurisdiction by default: it was ordered that "general reference of the state of the cause, except it be by consent of the parties, to be sparingly granted."[38] Nevertheless, while he warned against reports which exceeded their frame of reference, Bacon explicitly required the Masters "not to certify the state of any cause as if they would make breviate of the evidence on both sides, which doth little ease the court, but with some opinion. . . ."[39] The point was that no Chancellor could dispense completely with the Masters' assistance in deciding suits; Bacon was simply attempting to ensure that the Chancellor did not become a mere cypher.

If the judicial activities of the Masters constituted a threat to the good order of the court, there was a broader crisis in the bureaucratic structure of Chancery. The marked expansion of business and

increase in procedural complexity in the sixteenth century cried out for corresponding innovations in officialdom, but the conservatism of the established office-holders was a formidable obstacle. At the centre of the storm were the Six Clerks and the Registers. Together, these officials--with the Examiners of the court--largely accounted for the masses of paper-work arising from equity proceedings in Chancery, and they jealously guarded their rights and fees. The Six Clerks, representing "the largest and most crucial department within the Chancery",[40] were entrusted with a range of important clerical duties, including the making of various writs (excepting the subpoena), and the drawing and enrolling of decrees. But they had come to perform a legal function as well. Although they were sworn officials of the court appointed by the Master of the Rolls, the Six Clerks acted as the nominal attorneys to suitors in Chancery. They oversaw and consulted on cases, while providing copies of pleadings, examinations, and so on. Potential conflicts of interest aside, their dual responsibilities necessitated the delegation of much of the workload to subordinates whose place in the bureaucratic hierarchy was uncertain. Ellesmere's attempts to rationalize the status of these underclerks, by limiting their numbers and placing them under the supervision of the Master of the Rolls, achieved a measure of success.[41] But the tendency of the clerical establishment to proliferate in an erratic manner continued to be a problem. From the litigant's standpoint, it was most obviously a problem of irregular and exorbitant fees.

The vexed question of officials' fees, of course, extended

beyond Chancery and other courts to every branch of early modern administration.[42] There was a crippling disjunction of responsibility and remuneration which, with the venality of offices and the inflationary spiral, undermined traditional fee schedules. Thus, considerable latitude must be allowed in distinguishing sharp practice from accepted perquisites in this period. Still, contemporaries constantly complained of excessive fees and corruption, and the Six Clerks' offices received particular attention.[43] In fact, the Six Clerks were entirely dependent for their income on fees and gratuities, receiving no regular pension;[44] while their underclerks enjoyed no recognised fees. Bacon, in his 1619 ordinances, did little more than reiterate standing orders against the immoderate length of bills, answers, replications, and rejoinders, and against the needless spinning out of copies.[45] There were no specific instructions for the better government of the underclerks.

By contrast, no fewer than ten ordinances were directed at the office of the Registers, who were responsible for the entering and copying of orders and decrees. The 1598 commission inquiring into fees in Chancery had singled this office out--perhaps unfairly--as extortionate.[46] And there were the best reasons for taking steps to protect the official records of the court from tampering. Understandably, then, as a first principle Bacon required that the Registers be sworn to an oath. In addition, they were to be held strictly accountable for accuracy in setting down orders and decrees, and for the information of the court in noting previous material orders.[47] Finally, as if to underscore the growing

importance of precedents in the court of Chancery, it was declared that:

> Where any order, upon the special nature of the case, shall be made against any of these general rules, there the Register shall plainly and expressly set down the particular reasons and grounds moving the court to vary from the general use.[48]

For Bacon, this was the touchstone of reform: the repudiation of all unwarranted proceedings.

However, while general orders in Chancery undoubtedly were of value in shaping the "rules of equity",[49] their efficacy as a tool for administrative reform was minimal. Under the pressure of the flood of litigation, such statements of policy needed continuous reinforcement. The ordinances promulgated by Lord Keeper Coventry in 1635 again renew the strictures of his predecessors concerning clerical abuses and unnecessary references.[50] Mid-century reformers took up the same themes: the general orders of the Commissioners of the Great Seal, 1649, echoed Bacon and Coventry.[51] But the movement for law reform, by the Civil War period, was bound up inextricably with political aims. In 1649, there was a sweeping proposal to Parliament for the abolition of the Six Clerks, the Registers, the Masters, and other senior officials, and the appointment in their place of professional underclerks and attorneys, with some "reasonable allowance" in lieu of fees.[52] If the underlying grievances were familiar, this was a far cry indeed from the demands of reformers, however political, in Bacon's time. Inevitably in the early Stuart period, administrative reform was hostage to the good-will of the patented officials.

The established officials could be expected to resist any attempt to create new offices in Chancery as an encroachment on their prerogatives. Thus, the office for registering and copying affidavits and oaths, a monopoly granted by letters patent in 1615, was circumvented in practice, and the patentee forced to appeal to Bacon. In fact, the rationale for such an office may have been sound, but its opponents were able to play upon the contemporary suspicion of monopolies and it was among the patents set down for investigation by the Privy Council in 1621.[53] In the same way, the appointment in 1617 of two auditors in Chancery, "for expedition in matters of calculation and accounts", offended the Masters, and they had to be warned against obstructing the new office. The auditors complained to James I in 1621 that the Master of the Rolls had suspended the use of their office "pretending that it should be offensive to the parliament. . . ."[54] Bacon himself discouraged the application of one of Buckingham's protégés for a monopoly of certain clerical functions on the grounds that he was obliged to distinguish instances

> where things have been written by all the clerks indifferently and loosely, in which case the king may draw them into an office; and where they have appertained to one especial office, in which case the king can no more take away the profits of a man's office than he can the profits of his land.[55]

In any case, there was the obvious danger that new offices would simply compound delays and expense.

The built-in stumbling-blocks to Chancery reform, then, had frustrated successive Chancellors, and Bacon greeted the reforming aspirations of the 1621 Parliament with an enthusiasm overlaid with

irony. He let it be known

> that he would thank any man that would propound the means of reforming his court. His Lordship had begun to take away some abuses and found the corruption fruitful and apt to increase if the sickle were not put in amongst them.[56]

In his preparations for the Parliament,[57] the Chancellor evidently had failed to foresee that the Commons would assign a priority to law reform, but he was disposed to co-operate. It is worth noting that he had entreated the king--though without success--to suppress an admonition in the royal proclamation for the Parliament warning off "curious and wrangling lawyers, who may seek reputation by stirring needless questions".[58] Moreover, the expressed aims of the Commons were moderate. When the House established a committee of the whole to hear and inquire into complaints against all the courts, it was enjoined to

> inquire and redress such courses of courts as were prejudicial to the subject by excess of charge or hinderance of dispatch. Not to weaken decrees of courts and question matters already decided.[59]

This was in line with Bacon's own approach to reform, and the choice of Sir Edward Sackville, scarcely a radical, as the committee's chairman was reassuring.[60]

On 13 February, the day before the committee convened, Coke spoke in the House on a bill for the limitation of actions at law. Moving that equity proceedings should also be subject to limitations, he nonetheless averred that it was "not fit to meddle with the power or jurisdiction" of Chancery, "but so restrain the persons only that sue for equity".[61] Unerringly, Coke picked out one of the major weaknesses

in Chancery procedure: -

> . . . if the King's Bench . . . be limited, why should not the Chancery. If a fine and recovery be passed, if a deed be enrolled, these are of record, and may be had at any time after; yet they are limited. How much more should suits in Chancery, which have no writing to prove but oath of witness, which may die. So that if one bring witnesses to outswear me, my land is gone and yet there is no fault in the judge. I think this will be both plausible to the subject and acceptable to the judges who for want of this limitation are many times perplexed with these things.[62]

The veteran M. P., Edward Alford, followed Coke with a motion that time limitations be prescribed for ending as well as beginning suits. He cited his own experience as defendant in a Chancery action which had lasted twenty-four years.[63] But there was no suggestion of a campaign against Chancery; both motions were referred routinely to the committee for the limitations bill.[64]

The first meeting of the committee of the whole for the courts was given over largely to complaints against the court of Wards, but a wider question of conflict of jurisdiction was raised by Cranfield. It appeared that in a dispute between a certain ward and a parson over tithes, actions lay in both Wards and Chancery. The upshot was a bizarre impasse:

> . . . the court of Wards committed the parson, who afterwards brought his suit in the Chancery, which in like manner committed the ward; and so both parties are now in prison. And this proceeds because there is no difference set between the jurisdiction of courts.[65]

The committee was disinclined to pursue the matter, Hall v. Fuller, claiming no power to examine jurisdictional questions. Pressed for an opinion, it subsequently held that "neither court had wronged the

jurisdiction each of other, but Sir John Hall had wronged both".[66] Cranfield, however, was adamant that both courts could not be in the right, and at length it was agreed that the whole House should review the case.[67]

This decision had the most serious implications. For his part, the Master of the Wards emphasised that the Commons might make inquiry but had no authority to settle the jurisdiction of courts--that belonged to the prerogative of the king. Alford flatly disagreed, asserting the omnicompetence of Parliament.[68] In the event, the finding of the House in Hall v. Fuller was modest in scope:

> . . . it was resolved that both courts had done wrong, that both parties should be declared by the opinion of the Parliament to be set at liberty by both the judges, that some course should be taken for reformation of abuses in both courts, especially for writs of assistance, wherein in this cause both had offended.[69]

There was an obvious reluctance to touch jurisdiction, though Coke promised a bill "for the repressing the overflowing of the Chancery".[70]

Meanwhile, the committee attacked the problem of the excessive cost of litigation. It was affirmed that "it now costs more to get a day of hearing than the matter is many times worth".[71] Sir Julius Caesar, the Master of the Rolls--the bureaucrat par excellence--blamed the rise of new offices for the increase in fees.[72] His analysis was borne out by the revelations of corruption in one such office, the Registers in Chancery. On 28 February the committee heard evidence that, against their oaths and the rules of the court, the Registers had amended orders in the Entry Books, and even invented orders themselves, "fathering them

upon some counsel's motion".[73] Noy declared that it was exorbitant fees for orders in Chancery which engendered these abuses and proposed a bill "that the Registers shall have a certain fee and no more for the drawing and entering of an order, be it long or short".[74] A subcommittee was to examine all fees in Chancery, taking Ellesmere's 1598 inquisition as a standard.[75]

The eight "heads" of abuses in the courts propounded to the committee by Cranfield included excessive fees, charges for setting down cases for hearing, and charges for references.[76] Chancery was not the only delinquent, but the Registers and Masters were notorious. On 2 March there was a complaint in the House that the Masters took fees "by colour of a privy seal, against act of Parliament".[77] The storm broke on 26 March. In a major speech on Chancery reform, Alford condemned "the new fees to the Masters of the Chancery, who taking upon them the place of judges should not receive any fees". He moved that the multiplicity of references be curtailed and that the number of Masters be reduced from twelve to six.[78] Coke followed with a ringing attack on the overextension of Chancery in which he pronounced that "no judge can make a deputy, and so the referments against law".[79] In a masterpiece of bad timing, Sir John Bennet chose just this moment to prefer to the House a petition of the Masters for ratification of their new fees under the privy seal.[80]

The Masters claimed the loss of certain customary profits through the establishment of new offices in the court, pointing to recent letters patents for the making of subpoenas, for writing to the

great seal, and for the making of writs of supplicavit and supersedeas, among others.[81] Their complaints had been set out in the late-Elizabethan Treatise of the Masters of the Chancery, with the remarkable suggestion "that we ought at first rather to renew the performing of our duties without gain, than over-eagerly to pursue our gain. . . ."[82] If the Masters were unlikely to dispossess the interlopers, in any case their own preoccupations had altered significantly. Their time was taken up increasingly in preparing suits for hearing and deciding interlocutory matters. The problem was that a statute of 1604 "for the better execution of justice" expressly prohibited the taking of fees on judicial references.[83] In view of their burgeoning responsibilities, the Masters felt justified in moving the king for relief. Their case was referred to the consideration of Bacon, Chief Justice Montagu, and Attorney General Yelverton, and in 1618 a privy seal was granted approving a new fee schedule.

It was this schedule for which the Masters sought parliamentary confirmation in March, 1621. Their petition was ill-timed and ill-judged, and predictably it backfired in the Commons. The 1604 act to the contrary, the new fees included a flat rate of 20s. on each reference, as well as 5s. for every decree or dismission.[84] According to the petition, the common law judges had certified this circumvention of the statute

> . . . made only to prevent corruption, exaction, and extortion, not to abrogate the power of his Majesty or his courts of justice to establish reasonable fees to ancient officers and ministers of the said court for their necessary attendance and service. . . .[85]

The House was openly skeptical. At the resumption of the session on 17 April, the Solicitor General, Sir Robert Heath reported a bill for "restraint of references and fees thereupon",[86] and the offending privy seal was referred to the committee for grievances. One of the Masters, Sir Eubulus Thelwall, testified ingenuously

> that there was not a penny given by the Masters of the Chancery to anyone to procure the privy seal for the aforesaid fees; but after the privy seal was granted, all the Masters of the Chancery, save two or three, gave the Lord Chancellor Bacon one hundred and fifty pounds apiece, for a gratuity for what was done; and hoping also that his Lordship would be a means to restore them to the benefit which was anciently belonging to them.[87]

However unwittingly, the damage was done; the Masters' cause was linked with Bacon's, which was already before the Lords. The judges cited in the petition now utterly denied having sanctioned the fees in point of law,[88] and the plain implication was that the privy seal had been obtained fraudulently by the Lord Chancellor.

On 27 April the House declared the new fees of the Masters a grievance in both creation and execution.[89] The outrage touched not only the judicial system but the dignity of Parliament; Thomas Mallett, a leading counsel, averred that "none but base parasites, if they have knowledge in the law, will say that the privy seal can frustrate an act of Parliament".[90] But, as George Norbury noted in his primer, for Bacon's successor, The Abuses and Remedies of Chancery, (ca. 1621), the statute of 1604 ultimately was doomed to failure because it attacked only the symptoms and ignored what he thought was the real cause of abuse--over-reliance on references.

> And what was the sequel? Verily the Parliament was no sooner ended but, the business of references continuing as amply as ever, the clients for their dispatch were enforced to give, and the Masters (whose labours were still used) were adventurers by the client for that which he voluntarily gave them, and by which he received benefit.[91]

The practice defied legislative remedy. Bacon, in fact, consistently sought to minimize the importance of references in making decrees; his efforts on behalf of the Masters in 1618 were not necessarily contradictory--a standard fee undoubtedly was preferable to systematic extortion.

The indispensability of the system of references was challenged in an anonymous tract, An Answer unto the Petition of the Masters of the Chancery. With obvious polemical intent, it was charged that, unless the judges of the court were "slothful, ignorant, or corrupt", the reports of the Masters were virtually superfluous. Moreover, the system was notoriously self-perpetuating:

> It is found a most chargeable course, for many times one reference begets another, even three or four in one branch of a cause; every reference also causing an order and sometimes two or three hearings in examining the validity of one answer, and every hearing paying 20s. to the Masters besides the charge of counsel on both sides. . . .[92]

Without exhaustive analysis of the Order Books, it is difficult to judge Bacon's success in attempting to restrict dilatory references. The reduction of Chancery's chronic backlog of business argues increased efficiency, but contemporary critics like Norbury were unimpressed. Coke, characteristically, observed that while the Chancellor and the Master of the Rolls together could not possibly handle the swelling case-load, the court was "to be regulated by renovation, not innovation".[93]

The Masters, then, might "take an account or do matters of form, but not meddle with the merits of the cause"--no judge could make a deputy.[94] Nevertheless, by way of innovation, a bill was introduced on 30 April "to establish two judges assistants in the court of Chancery and to lessen the charge of suits in that court", providing that all references should be to the new judges, without charge.[95]

This bill summarized various proposals in the House for administrative reform in Chancery. Six Clerks, Examiners, and Registers were limited to standard fees on pain of dismissal and fines; and judges of the court alone were empowered to set down causes for hearing.[96] But the bill also reflected the Commons' growing concern that Chancery was becoming a law unto itself--the new judges were to be "two learned judges of the coif", that is, common law judges.[97] All orders and decrees were to be by consent of a majority of the four judges (including the Master of the Rolls). In the event of a deadlock, the issue would be resolved with the assistance of other common law judges, again by majority opinion:

> . . . the two Lord Chief Justices, of the King's Bench and Common Pleas, and the Chief Baron of the Exchequer, for the time being, shall join with the other four judges, to hear and determine the cause so in difference, according to equity and right.[98]

On any reading, these conditions suggested a radical revision in the working of the court: the extraordinary latitude enjoyed by the Chancellor was to be circumscribed by a judicial committee. The House was reacting to suggestions that the court of Chancery regularly abused its power at the expense of other jurisdictions.

Particularly offensive to common lawyers was Chancery's readiness to grant injunctions staying actions for debt, and to authorise bills of conformity. By bills of conformity, creditors could be compelled to accept a rateable composition on debts in cases of insolvency when the creditors claiming the greater proportion of the debts agreed to such an arrangement. Alternatively, creditors might agree together to allow extensions on repayment. The point was that one creditor was prevented from prosecuting for recovery at the expense of the others.[99] According to Coke, bills of conformity had originated with Ellesmere, who nevertheless had been "very wary in granting them".[100] The practice became widespread under Bacon, and he belatedly published a set of rules on the subject in October 1620.[101] Bacon insisted that conformity was not to be enforced at the suit of the insolvent party himself, but only upon a petition of the creditors; nor would any order be made until the full extent of the debts had been certified to the court by the Masters or other commissioners. Two crucial clauses set out conditions for the court's intervention:

> That no relief be given upon any such bill or suit except the debts of the creditors that have agreed amount at least to full three parts in four to be divided of the total of the debts. And not in those cases neither but sparingly, by the discretion of the court upon hearing what may be alleged on both sides.
>
> That no proceeding at the law, in case of any such suit, be stayed against sureties of the insolvent, nor against the lands or goods of the insolvent himself in case of recognizance, statute. or judgment, but only against the person of the insolvent.[102]

Thus, conformity was designed basically to guarantee the rights of

creditors and was not to be used to shelter debtors.

Such safeguards notwithstanding, bills of conformity and the unwarranted protection of sureties were listed among Cranfield's eight heads of abuses in the courts in 1621.[103] On 14 March, the matter came before the committee of the whole, which had received a complaint that Chancery was relieving fraudulent insolvents.[104] Cranfield and Heath hastened to vouch for the king's good faith in preferring debtor's petitions to the courts on grounds of "conscience". James reportedly had protested. with some heat, "that his intention was not to extend further than to a commendation of the petitioners to the conscience of the creditor, not to the staying of suits or the discharging of sureties".[105] He had returned the same answer to a supplication of the City of London against bills of conformity in 1620.[106] Cranfield, himself a leading London merchant before his rise in the government, warned the Commons

> that the business of Sir Giles Mompesson is but a trifle compared to these kinds of injunctions, which strike at men'a whole estates--that it were as good a man took away a man's purse, as hinder him to recover by justice his due debt.

He bade them

> be bold to proceed in this, for he is sure that the king will never countenance any authority that shall stay the course of justice: for, of his knowledge and in his hearing, the king disclaimed that ever he gave order that his name should be used in such business.[107]

Thus encouraged, a prominent member of the House, Sir Baptist Hicks, testified that the Lord Chancellor had stayed his actions for debt in a number of cases--notably, against Serjeant Finch, as principal

debtor, and his sons, as sureties.[108] John Finch, also an M. P., admitted his father's debt and his own bond, confessing himself "no freer from law than if he were a principal, for so he is in law".[109] But he denied that the protection had been obtained by extraordinary means:

> That he was never acquainted with the petition presented to his Majesty, nay, he desired there might be none such; neither did the Lord Chancellor (to whom the world knows he is infinitely tied for his favour) ever grant this protection at his motion; for the order granted for a protection to his father is not the first that hath been granted in that kind, but he thinketh that it is the last of this nature that his Lordship hath granted.[110]

If this was meant to forestall criticism of Bacon, Cranfield and Coke were suspicious, and called for an examination of the bill, orders, and injunctions in the case--and for similar cases.

Pressing the advantage, Coke blithely asserted that Chancery was empowered to provide relief only in cases of covin, accident, or breach of trust.[111] The claim was polemical, but it caught the mood of the Commons: an unfettered Chancery threatened the "ancient constitution" of the realm, founded on the common law.[112] Dudley Digges, a Master of the Rolls himself in the reign of Charles I, seconded Coke:

> . . . it is to be feared that the latitude of the jurisdiction of that court hath brought in the many mischiefs that are now complained of by all men that have to do in the same. He desireth there may be some course taken. that it may not lie in the breast of one man (be it whosoever) to use so large a power. but that he may by some means be tied to the old rules and bounds of the Chancery, which is only to mitigate the rigour of the law.[113]

Sir Thomas Roe proposed a committee to reduce the court "into its ancient course" without troubling with particulars: "Tis better to

sweep a great room than pick up every stick and straw".[114]

How far the House was Coke's dupe in all of this is uncertain. The former Chief Justice could be expected to seize every opportunity to undermine the verdict of 1616 and embarrass Francis Bacon. At the same time, bills of conformity were a genuine grievance, especially in the City,[115] and the reformers enjoyed the backing of James I. On 20 March, Cranfield brought a personal message from the king signifying his willingness to revoke bills of conformity and protections, and leaving it to the Commons to consider how this might be done. It was agreed that there should be "a proclamation to avoid them for the present, and a bill to prevent them for the future". Those who had been imprisoned for disobeying injunctions on the offending bills were to be freed.[116] Mutual expressions of regard passed between the king and the Commons,[117] and the royal proclamation published on 31 March, 1621, abolished bills of conformity

> for that thereby hath ensued as well the emboldening of debtors not to pay their debts in due time, whereby many men have been disappointed, and not able to keep their credit with others, . . . as also the encouraging of wilfull bankrupts and deceitful persons, and the scarcity of money . . . together with a general hinderance of trade, and traffic, and many other inconveniences. . . .[118]

On 18 April, Caesar, in Bacon's absence, issued a general order in Chancery ratifying the proclamation.[119]

Yet, despite this amicable solution, the bills of conformity question may be said to have marked the radicalization of the law reform movement in the 1621 Parliament. Under the implacable tutelage of Coke, the Commons was moved to examine questions of "jurisdiction". Chancery

was an egregious--though by no means the only[120]--offender. In leading speeches in the House on 26 March, Coke and Alford proposed a strict redefinition of the power of equity.[121] They challenged the Chancellor's right to levy fines or grant writs of assistance for possession, arguing that Chancery was no court of record and bound only the person, not the right. It was an ancient axiom that aequitas agit in personam, and this was taken to mean that equity courts had no jurisdiction to settle the interest in land.[122] Above all, declared Coke:

> . . . the Chancery can meddle with no matters belonging to the common law . . . or determinable by it, and this he would undertake to prove out of every book from 2 Edward III till now, and then . . . how would Westminster Hall flourish. . . .[123]

Bacon himself had conceded this much in his inaugural address, but there was the further claim, by an unidentified Member, that Chancery had no power to entertain suits after judgment at the common law--[124] an ominous refrain.

Coke, for his part, shunned the overt attempt to revive the 1616 dispute. With a certain righteous indignation, he protested that he spoke out against Chancery not "because the now Lord Chancellor under a cloud, for sorry for it; but as a free man, who knoweth what he speaketh".[125] If this suggested a quite uncharacteristic degree of disinterested concern, it is worth noting that Coke's arguments drew heavily on the 1529 articles against Wolsey, another fallen Chancellor, who was specifically charged with having intervened after judgments at law.[126] It was Coke's consistent view that Chancery could touch no matter determined or determinable in the common law courts--what was at

stake was the primacy of the common law. He warned that "we shall do nothing, if we make not an Act to remedy this".[127]

On 17 April, Heath reported a bill for "due limits of jurisdiction" in courts, though it is not clear what this contained.[128] Subsequently, a committee was struck for "regulating" Chancery, but at the adjournment in June no bill had been produced.[129] Still, the Commons was reluctant to see the initiative slip away. Sir Samuel Sandys observed:

> I would wish the jurisdiction of courts might be abridged and limited. Concerning the Chancery, I wish we may not leave with the person, [i. e., Bacon], least we leave the place infectious for the next. Therefore to petition his Majesty that he will please to command that it shall keep within its own limits till we meet again, and offer him some rules for it by petition more particularly.[130]

However, the king's own expectations had been set out in a speech to both Houses at Whitehall on 20 April. While he was convinced that reform in the judiciary "would be of more value than ten subsidies", James insisted that "herein we should labour to take away abuses, not the jurisdictions of courts".[131] In the end, the jurisdictional questions raised by Coke remained unresolved, and Bacon's successor, John Williams, was left to make his own peace with the common law.[132]

Norbury, who had provided expert assistance to the select committee investigating Chancery, offered his findings to the new Keeper in his primer of abuses and remedies. He depicted the problem of overreaching jurisdiction as the inevitable consequence of procedural ambiguities: the rules of equity must be further clarified for the

better information of both the litigants and the court itself, "seeing the old rule must ever hold true, that the commonwealth is best governed where least is left to the direction of the judge".[133] Bacon's general ordinances of 1619 had gone some way towards supplying the needed framework, but the bills of conformity scandal, in particular, cast the most serious doubts on the Chancellor's good faith. Discharge of bankrupts and protection of sureties appeared to strike at the very heart of the common law, inverting "the course of honest, careful, and precise dealings between man and man". Here, then, was the gravamen of the attack on the courts of equity:

> For to what purpose are bonds made with penalties, leases with forfeitures nomine poenae and clauses of re-entry, if the wilfull violators shall be exempt from all punishments; and who will take care to pay either debt or rent?[134]

Ellesmere was remembered as an unbending constructionist; Bacon's reputation was for "lenity"--the equity of redemption on mortgages, for example, is thought to have originated in his Chancellorship.[135]

Thus perceived as the nemesis of the common law, Bacon undoubtedly was the focus of the Commons' obsession with the court of Chancery. Yet it is difficult to credit Mr. Zaller's view that Chancery in 1621 was destined to be "the scapegoat among the courts, as Bacon had been among the referees", and that "the choice of the first victim [that is, Bacon] . . . had virtually determined the choice of the second".[136] There is abundant evidence that Chancery reform was a legitimate theme in early Stuart politics long before the 1621 Parliament, and that its eruption there was natural given the dearth of Parliaments in the

preceding decade. Bitter personal and political differences with the Lord Chancellor cannot be overlooked, but the claim that Coke and Cranfield traded on Bacon's weakness to manufacture the Commons' campaign against Chancery can be made to stand on its head. In the end, Bacon's intimate association with every aspect of the operation of the embattled court increased his political vulnerability. The litany of complaints--against the Registers, against the Masters' fees, against bills of conformity--inevitably tended to discredit him, though the allegations of bribery were obviously decisive.

To some extent, then, Bacon was a victim of institutional evils which he himself deplored and attempted to combat. Indeed, he was in basic agreement with Coke on the general need for overhaul of the court structure; rhetoric aside, Coke, with his sure grasp of the possibilities, was scarcely aiming to cripple the court of Chancery. The temptation is to read too much into bills in the Commons for the "regulation" of Chancery; such legislation was in line with the government's own policy, as expressed by men like Ellesmere and Bacon, and by James I himself.[137] The Commons in 1621, with little enough "official" direction, made the policy its own.

FOOTNOTES--CHAPTER III

[1]The literature is particularly rich in the Interregnum period. See S. E. Prall, The Agitation for Law Reform during the Puritan Revolution 1640-1660 (The Hague, 1966); and D. Veall, The Popular Movement for Law Reform 1640-1660 (Oxford, 1970).

[2]R. Zaller, The Parliament of 1621: A Study in Constitutional Conflict (Berkeley, California, 1971), p. 97.

[3]See e. g. the 1610 commission to all judges at Westminster for reform of their courts. British Library, Additional MS 34, 324, fols. 45b-60.

[4]B. Shapiro, "Law Reform in Seventeenth Century England", American Journal of Legal History 19 (1975), p. 287, suggests that Bacon "has been insufficiently recognized as a leader of Jacobean legal reform", but her assessment is based on an extremely dubious reading of Bacon's importance as a publicist, "a key element in establishing the continuity of law reform ideology" through to the mid-century. Her inflated claims for De Augmentis Scientiarum, for example, are surely wrong-headed; the connection with "revolutionary" reformers is unproven.

[5]See the standard account in D. M. Kerly, An Historical Sketch of the Equitable Jurisdiction of the Court of Chancery (Cambridge, 1890), chapter vii. Habeas corpus is examined as a potential weapon against Chancery in J. P. Dawson, "Coke and Ellesmere Disinterred: The Attack on Chancery in 1616", Illinois Law Review 36 (1941), pp. 127-152.

[6]The pioneering work is W. J. Jones, "Conflict or Collaboration? Chancery Attitudes in the Reign of Elizabeth I", A. J. L. H. 5 (1961), pp. 12-54. See also Jones, The Elizabethan Court of Chancery (Oxford, 1967), especially chapters xii-xiii. More recently, the evidence of prohibitions to inferior equity courts is re-evaluated in C. M. Gray, "The Boundaries of the Equitable Function", A. J. L. H. 20 (1976), pp. 192-226. What follows is generally indebted to these works.

[7]Bacon to James I, 21 February, 1616, in J. Spedding, ed., The Letters and the Life of Francis Bacon (London, 1861-1874), v, p. 252.

[8]Gray, "The Boundaries of the Equitable Function", p. 223. Contemporary arguments for Chancery were set out in Thomas, Lord Ellesmere, The Privileges and Prerogatives of the High Court of Chancery (London, 1641).

[9]See W. Holdsworth, A History of English Law 3rd ed. (London, 1945), v, pp. 278-338. See also Reports of Cases Decided by Francis Bacon . . . in the High Court of Chancery (1617-1621), ed. J. Ritchie (London, 1932), passim.

[10]See Jones, The Elizabethan Court of Chancery, pp. 455-485.

[11]D. E. C. Yale, introduction to Lord Nottingham's "Manual of Chancery Practice" (Cambridge, 1965), p. 10. Equally obtuse is Plucknett's celebrated observation that "if the common law had recognised trusts, and had allowed equitable defences to specialties . . . they might have succeeded in abolishing Chancery and uniting law and equity". T. F. T. Plucknett, A Concise History of the Common Law 5th ed. (London, 1956), p. 198.

[12]Cited in Holdsworth, History of English Law 7th ed. (London, 1956), i, p. 461.

[13]G. Cary, "Reports on Causes in Chancery", fol. 118, in The English Reports (London, 1902), xxi, p. 61.

[14]Ibid., Cary 119-120 [21 Eng. Rep. 62]. In the 1614 Parliament, a bill "for the peace of the king's subjects after judgment by them had at the common law" received first reading but went no further. Historical Manuscripts Commission, Third Report (London, 1872), Appendix, p. 15.

[15]18 July, 1616, Cary 133-135 [21 Eng. Rep. 65]. In a speech in Star Chamber, 20 June, 1616, James I had conceived the court of Chancery "following always the intention of law and justice, not altering the law, not making that black which other courts made white, nor e converso . . .". But, characteristically, he had gone on to tie in the prerogative: "The Chancery is independent of any court, and is only under the king. There it is written Teste me ipso; from that court there is no appeal. And as I am bound in my conscience to maintain every court's jurisdiction, so especially this, and not suffer it to sustain wrong; yet so to maintain it as to keep it within the own limits, and free from corruption." Cited in G. W. Sanders, Orders of the High Court of Chancery (London, 1845), i, p. Xn.

[16]Bacon's speech "at the taking of his place in Chancery", 7 May, 1617, Letters and Life, vi, p. 185.

[17]Ibid., p. 184.

[18]Ibid.

[19]Ibid., p. 185. This requirement was confirmed in the 1619 Chancery Ordinances (no. 33). The Works of Francis Bacon, ed. J. Spedding et al. (London, 1859), vii, p. 764.

[20]Letters and Life, vi, pp. 185-186. See also 1619 Ordinances (No. 21), Works, vii, p. 762.

[21]Letters and Life, vi, p. 187. There were eleven Masters in ordinary, plus the Master of the Rolls.

[22]See D. E. C. Yale, introduction to Lord Nottingham's "Manual", pp. 16-65; and W. J. Jones, "Due Process and Slow Process in the Elizabethan Chancery", A. J. L. H. 6 (1962), pp. 123-150.

[23]Letters and Life, vi, p. 187.

[24]Account of Council business, etc., 9 May, 1617, Ibid., p. 198.

[25]John Chamberlain wrote that Ellesmere "left but an indifferent name being accounted too sour, severe, and implacable, a great enemy to Parliaments and the common law, only to maintain his own greatness and the exorbitant jurisdiction of his court of Chancery". Chamberlain to Carleton, 29 March, 1617, The Letters of John Chamberlain, ed. N. E. McClure (Philadelphia, Pa., 1939), ii, p. 65.

[26]Bacon's speech, Letters and Life, vi, pp. 190-191.

[27]Ibid., p. 192.

[28]Jones, The Elizabethan Court of Chancery, p. 16. See also Jones, "Due Process and Slow Process". A contemporary official in Chancery laid the blame for delay squarely upon the suitors: ". . . it is evident that motions are the source and original of references, and of those orders which the last Lord Chancellor [Bacon] not unaptly termed interlocutory, being before hearing, and consequently of all confusion. For it hath ever been noted that none will be so ready to move as he that hath the worst cause; for he hath nothing else to trust to." G. Norbury, "The Abuses and Remedies of Chancery", A Collection of Tracts Relative to the Law of England, ed. F. Hargrave (London, 1787), i, p. 443.

[29]Bacon to Buckingham, 8 June, 1617, Letters and Life, vi, p. 208.

[30]Bacon to Buckingham, 6 December, 1617, Ibid., p. 283.

[31]Bacon to the Lords, 19 March, 1621, Letters and Life, vii, p. 216.

[32]26 March, 1621. E. Nicholas, Proceedings and Debates of the House of Commons in 1620 and 1621 (Oxford, 1766), i, p. 226. See also Commons Debates 1621, ed. W. Notestein et al. (New Haven, 1935), iv, p. 195. Elsewhere Vane's figure is given as 20,000 subpoenas a year. Commons Debates, v, p. 321.

[33]See, for example, Chamberlain to Carleton, 24 May, 1617, Chamberlain Letters, ii, p. 76. As late as 1619, Chamberlain reported that "the Lord Chancellor's slackness (caused by the delicateness of his constitution) hath raised a rumour, as if he were like enough to have a Lord Keeper for his coadjutor, or rather to have the place executed by commission when his health will not suffer him to follow it. . . ." Chamberlain to Carleton, 24 April, 1619, Ibid., p. 233.

[34]See Jones, The Elizabethan Court of Chancery, pp. 103-117, 266-280. The Masters' judicial function was justified in the late-Elizabethan tract, "A Treatise of the Masters of the Chancery": ". . . surely the ancient kings of this realm did very vainly and unnecessarily bestow the charge of maintaining so many clerks about the Chancellor, if they were to sit idly and unexercised about him. And therefore, albeit they be not bound to give their advice by the formal words of their oath, until they be asked; yet I think it is the Lord Chancellor's part to use and employ all those helps and aids which may support and strengthen his sentences and decrees with most vigour and authority." Collection of Tracts, ed. F. Hargrave, i, p. 314. See also W. J. Jones, William Lambarde's Chancery Reports and Certificates Preserved in the Public Record Office (n. p., n. d.).

[35]Clare v. Lucas (1617), Reports to Cases Decided by Francis Bacon . . . in the High Court of Chancery (1617-1621), ed. J. Ritchie (London, 1932), pp. 58-59.

[36]101 ordinances are printed in The Works of Francis Bacon, ed. J. Spedding, vii, pp. 759-774. Manuscript copies, incorporating slight variants and giving date of publication as January 1619 are in British Library Additional MSS 28, 607, ff. 112-119, and 25, 245, ff. 5-15.

[37]Order 45. Bacon, Works, vii, pp. 765-766. In his Archeion (1591), Lambarde--later, a Master himself--recognized the inefficiency of Chancery procedure in this regard. He suggested that "some good means were advised whereby suitors in the Chancery, and such like courts, might before their day of hearing, which they purchase not without great expenses, learn whether they shall be dismissed thence to the trial of the common laws, or no; which thing, whether it might be better performed by suffering plea to the jurisdiction of the court, or by summary consideration of the case collected out of the bill and answer, or by a faithful report of the estate of the matter under oath and at the peril of both parties, or by some other way, I will leave to the judgment of such as have more wisdom to advise and power to execute." W. Lambarde, Archeion, ed. C. H. McIlwain and P. L. Ward (Cambridge, Mass., 1957), pp. 46-47.

[38]Order 47. Bacon, Works, vii, p. 766.

[39]Orders 48 and 49. Ibid.

[40]Jones, The Elizabethan Court of Chancery, p. 120.

[41]Ibid., pp. 122-125.

[42]See, for example, G. E. Aylmer, The King's Servants (London, 1961), pp. 160-252; and Aylmer, "Charles I's Commission on Fees, 1627-1640", Bulletin of the Institute of Historical Research 31 (1958), pp. 58-67. Schedules of fees for process in Chancery are found in T. Powell, The Attorney's Academy (London, 1623), pp. 75-86, and B. L. Harleian MS 1,576, ff. 230-232.

[43]Excessive fees to the Six Clerks were a grievance in the 1610 Parliament. Proceedings in Parliament 1610, ed. E. R. Foster (New Haven, 1966), ii, p. 71. Ellesmere was sensitive and the first provision of his Ordinances in the Easter Term, 1610, was that all former orders concerning the Six Clerks should be duly observed. Sanders, Orders, i, p. 83. In October, 1610, a commission was issued by James I to the judges of all the central courts to inquire into extortionate practices amongst their officers and clerks. The Chancellor was directed to ascertain "what service, charge, and attendance doth belong unto every of the said officers and clerks" in Chancery, and to set down "such and so many orders, ordinances, and constitutions" as were needed for their better government. B. L. Additional MS 34, 324, ff. 54, 55b. The evidence of successive administrations suggests that constant vigilance was required. See Sanders, Orders, i, passim.

[44]A Six Clerkship was not necessarily a sound investment. Simonds D'Ewes noted bitterly that his father, who held the place for over twenty years, "considering what he at first paid for it, and what he afterwards lost in the fire there, [December, 1621] . . . he might have been a richer man if he had never bought it, and have been also a means of a further restitution of his posterity in dignity and title as well as in revenue." D'Ewes, Autobiography and Correspondence, ed. J. O. Halliwell (London, 1845), i, p. 178.

[45]Orders 55, 67. Bacon, Works, vii, pp. 767, 768.

[46]See Jones, The Elizabethan Court of Chancery, pp. 144-149. A 1647 tract complained that Registers and clerks in Chancery could exact "above ten times as much . . . as other officers of like nature take and receive, and have usually taken and received, in other courts for the like things as they do or have done". [Anonymous tract], Certain Queries for the Public Good (London, 1647), p. 5.

[47]Orders 35-43. Bacon, Works, vii, pp. 764-765.

[48]Order 44. Ibid., p. 765.

[49]D. E. C. Yale has pointed to the influence of the 1619 ordinances on the late-seventeenth century "father of modern equity", Nottingham. Yale, introduction to Lord Nottingham's "Manual", p. 5, and passim.

[50]31 ordinances appear in B. L. Additional MS 28, 607, ff. 119-123.

[51]See Kerly, Equitable Jurisdiction, pp. 156-157.

[52][Anonymous tract], The Representation of Divers Well-affected Persons in and about the City of London (London, 1649), p. 14.

[53]Schedules of Grants, Appendix B, Commons Debates 1621, vii, p. 311. The Affidavit office was reviled in the Parliament of 1621 as one "which increaseth fees, and gives no better despatch or surety to the poor subject". Proceedings and Debates, i, p. 111.

[54]Schedules of Grants, Appendix B, Commons Debates 1621, vii, pp. 330-331.

[55]Bacon to Buckingham, 25 January, 1618, Letters and Life, vi, p. 295.

[56]John Finch, "on behalf of my Lord Chancellor", 14 February, 1621, Commons Debates, iv, p. 52.

[57]See particularly Bacon to Buckingham, 29 November, 1620, Letters and Life, vii, pp. 145-148.

[58]Proclamation "concerning election to next Parliament", 6 November, 1620, Stuart Royal Proclamations, ed. J. F. Larkin and P. L. Hughes (Oxford, 1973), i, p. 494. See also Chamberlain to Carleton, 9 November, 1621, Chamberlain Letters, ii, p. 328.

[59]William Hakewill, 8 February, 1621, Commons Debates, iv, p. 32.

[60]Zaller describes Sackville as "a man of moderate views and eloquent address, close to the Court and a known friend of Francis Bacon". Parliament of 1621, p. 74.

[61]13 February, 1621, Commons Debates, v, p. 452.

[62]Commons Debates, ii, p. 65.

[63]Commons Debates, iv, p. 43.

[64]Coke's subsequent bill "for limitation of petitions, complaints, and suits in courts of equity . . ." was referred to the same committee, 20 February, 1621, Commons Debates, ii, 107; iv, 82.

[65]Cranfield, 14 February, 1621, Proceedings and Debates, i, p. 44. When the committee reported to the House three days later, Coke warned "that the overflowing of jurisdictions overthroweth jurisdictions. . . ." Ibid., p. 56.

[66]Sackville's report, 2 March, 1621, Journals of the House of Commons, i, p. 535.

[67]Commons Debates, vi, p. 274; and v, pp. 533-534.

[68]2 March, 1621, Commons Debates, v, p. 20.

[69]16 March, 1621, Ibid., pp. 48-49. One wag noted that "complaints arise between the court of Wards and the Chancery, rather between the Master of the court of Wards and Masters of the Chancery. Thus when thieves fall out true men may come to their goods again". Commons Debates, vi, p. 378.

[70]16 March, 1621, Commons Debates, v, p. 305.

[71]Cranfield, 14 February, 1621, Proceedings and Debates, i, p. 44.

[72]Caesar, Ibid.

[73]Commons Debates, iv, p. 117.

[74]28 February, 1621, Proceedings and Debates, i, p. 111. A bill establishing a rate of 3s. per order was reported, 17 April, and had first reading, 19 April. Commons Debates, v, p. 72; ii, p. 300.

[75]Commons Debates, iv, p. 119; ii, p. 156. There is no evidence that this subcommittee sat, being superseded by later committees for regulating Chancery.

[76]28 February, 1621, Proceedings and Debates, i, p. 111.

[77]Commons Debates, v, p. 20.

[78]Commons Debates, iv, p. 194.

[79]Ibid., p. 195.

[80]Ibid., p. 196.

[81][Petition of the Masters in Chancery], Commons Debates, vii, Appendix B, pp. 519-521.

[82]In Hargrave, Collection of Tracts, i, p. 319.

[83]1 Jac. I cap. 10 (1604).

[84]Commons Debates, vii, p. 521.

[85]Ibid., p. 520.

[86]Report from the committee of the whole, Commons Debates, iv, p. 232; ii, p. 295.

[87]23 April, 1621, Proceedings and Debates, i, p. 304.

[88]Ibid., pp. 305, 334. It was reported that Bacon, hearing the judges condemn the fees, replied "that he had heard their opinions and did reverence the same, but yet they should give him leave to do in his court as he thought fit". Ibid., p. 348. Irregularities in the privy seal were examined by a subcommittee. Commons Debates, iii, pp. 102-104.

[89]Ibid., p. 99; v, p. 104; vi, p. 105. The fees were revoked by royal proclamation, 10 July, 1621. Stuart Royal Proclamations, i, p. 513.

[90]Commons Debates, v, p. 103.

[91]Norbury, "The Abuses and Remedies of Chancery", in Hargrave, Collection of Tracts, i, p. 429.

[92]"Answer", Commons Debates, vii, Appendix B, p. 522. The Masters' fees were especially repugnant: "Posito that references were useful in some particular, yet to take money for their reports, being matter of justice, were not sufferable. . . ." Ibid., p. 523. In 1621 the creditors of one Thomas Frith petitioned the Commons that their action in Chancery had been referred to the Masters, who "met only (as it seemed) to receive fees". H. M. C. Third Report, Appendix, pp. 26-27.

[93]27 April, 1621, Commons Debates, vi, pp. 104-105.

[94]Commons Debates, v, p. 103.

[95]"An act to establish two judges assistants in the court of Chancery . . .", Ibid., vii, Appendix A, pp. 244-248. The new judges were to receive 500 marks apiece annually out of the revenues of the subpoenas office and the office of the farmers of the profits of the great seal. Commons Debates, vii, p. 246.

[96]Ibid., p. 247.

[97] Ibid., p. 244. The king was to appoint the judges "from such as are or shall be judges in any other court of record at Westminster, or from such as are or shall be of the degree of serjeants at law. . . . And they shall wear and use the like robes and habit as do the judges of the court of King's Bench . . .". Ibid., p. 245.

[98] Ibid.

[99] Zaller is inaccurate in defining bills of conformity simply as "injunctions for the staying of debts". Parliament of 1621, p. 204 n. 126. Unfortunately, there is as yet no adequate study of debt and bankruptcy statutes define a bankrupt, roughly, as a deceitful insolvent --but only with application to "traders"--and are expressly designed "for the better relief of the creditors". See 13 Eliz. I c. 7 (1571) and 1 Jac. I c. 15 (1604). There was no provision in these statutes for the discharge of any part of the bankrupt's liabilities beyond what was actually paid off.

[100] 14 March, 1621, Commons Debates, vi, p. 39; vi, pp. 63-64.

[101] Rules 1-5, "Additional Rules for Better Governing of the Court of Chancery and the Great Seal", 31 October, 1620, Sanders, Orders of Chancery, i, pp. 129-130. See also B. L. Harleian MS 1, 576, fol. 200.

[102] Rules 3 and 5, Harleian MS 1, 576, fol. 200. For examples in practice, see Tiffin v. Hart (1618-1619), Finch v. Hicks (1620), Brooke v. Goode (1619), in Reports of Cases Decided by Francis Bacon, ed. J. Ritchie, pp. 161, 166, 191.

[103] 28 February, 1621, Proceedings and Debates, i, p. 110.

[104] Petition of Edward Coker, Commons Debates, iv, p. 153; ii, p. 221. A bill for the "further description" of bankrupts and relief of creditors had second reading on 13 March. Commons Debates, vi, p. 293.

[105] Commons Debates, iv, p. 154.

[106] Commons Journals, i, p. 525. See also Commons Debates, iv, p. 67; ii, p. 222.

[107] 14 March, 1621, Proceedings and Debates, i, p. 157.

[108]Ibid., pp. 157-158. See Finch and Others v. Hicks and Others (1620), in Reports of Cases Decided by Francis Bacon, ed. J. Ritchie, pp. 166-167.

[109]This accorded with Coke's view that "sureties bound jointly and severally are all principals", in Commons Debates, ii, p. 100.

[110]14 March, 1621, Proceedings and Debates, i, pp. 158-159.

[111]Ibid., p. 159; Commons Debates, v, p. 297; vi, p. 63.

[112]For the "myth of the ancient constitution", see J. G. A. Pocock, The Ancient Constitution and the Feudal Law (Cambridge, 1957).

[113]Proceedings and Debates, i, p. 159.

[114]Commons Debates, v, p. 40 and n. 7.

[115]Coke voiced the common fear when he declared that bills of conformity were "the cause men keep up their money and dare not let it out, which brings scarcity of money". Commons Debates, vi, p. 63. Scarcity of money and the decay of trade much exercised the 1621 Parliament. See, for example, Commons Debates, ii, pp. 29-31, 137-140, 212-213; iv, pp. 19, 104-106, 112-113, 149-150; v, pp. 3-4, 13-14. See also "Reasons Concerning the Decay of Trade . . .", in B. L. Harleian MS 1,576, ff. 262-265.

[116]20 March, 1621, Commons Debates, v, p. 55.

[117]Still, it is worth noting that the reformers were not without certain misgivings. Noy moved "that it may be put into the proclamation that it was published at the request of the Commons, for that not known of what dangerous consequence it may be to admit decrees in Chancery by way of proclamation". Ibid., p. 66.

[118]"A Proclamation for Abolishing of Abuses, by Bills of Conformity", 31 March, 1621, Stuart Royal Proclamations, ed. Larkin and Hughes, i, pp. 506-507.

[119]Sanders, Orders of Chancery, i, pp. 132-134.

[120]See, for example, the bill to prevent abuses in grants of certiorari and supersedeas of the peace and good behaviour issuing out of both King's Bench and Chancery. Commons Debates, iv, pp. 42, 117-118; ii, p. 151. The Lords' objections to the bill are in Commons Debates, vii, pp. 55-61. The conflict between the central courts and provincial jurisdictions seriously complicated the problem of law reform.

[121]Commons Debates, iv, pp. 193-195; ii, pp. 264-265; v, pp. 67-68; vi, p. 433.

[122]Against this interpretation, D. E. C. Yale has pointed out that "it seems necessary, if the maxim is to be a safe guide, to confine it to process and not freely to deduce from it the juristic nature of equitable rules. . . . It is submitted further that it is of very doubtful value to inquire minutely into the exact nature of equitable rights considered as rights in personam: it is easier and at the same time historically more accurate to hold to the antithesis of legal and equitable estates." Yale, introd. to Lord Nottingham's "Manual", p. 18.

[123]Commons Debates, vi, p. 433.

[124]Commons Debates, iv, p. 194.

[125]Commons Journals, i, p. 574.

[126]Commons Debates, iv, pp. 194-195, 195 n.

[127]Proceedings and Debates, i, p. 225.

[128]Commons Debates, iv, p. 232; v, p. 72.

[129]Commons Debates, iii, p. 79.

[130]28 May, 1621, Ibid., p. 327.

[131]Commons Debates, iv, p. 240.

[132]Sir Francis Moore advised Williams to state unequivocally in his inaugural speech in Chancery that "whereas assurances are passed of lands, goods, or leases, according to the rules of common law or statute law . . . that he means to make no decree against those

assurances except he find extraordinary fraud or collusion in the procuring them. And then he will confer with the judges and do that that shall be fit so far only as he shall be advised by them". Appendix I, Lord Nottingham's "Manual", ed. Yale, p. 79. In the event, Williams' speech affirmed that "it were most absurd to let the king's conscience be at enmity and opposition with his laws and statutes", but made no specific undertakings for settling jurisdiction.

[133]Norbury, "The Abuses and Remedies of Chancery", in Hargrave, Collection of Tracts, i, p. 431.

[134]Ibid.

[135]See C. M. Gray, "The Boundaries of the Equitable Function", A. J. L. H. 20 (1976), p. 215 n. 63.

[136]R. Zaller, Parliament of 1621, p. 97.

[137]It may be worth noting the "memorial of a secret bill" under consideration by the government for the 1614 Parliament: "for the better administration of justice and for the declaration and limitation of the jurisdiction of the courts". Letters and Life, v, p. 16.

CONCLUSION

Francis Bacon's Chancellorship, from which much might reasonably have been expected, foundered in 1621 amidst charges of maladministration and corruption.) His alleged failings of character aside, the indictment of Bacon underscored a broader discontent with the institutions of Jacobean government. The dual aspect of the Lord Chancellor's responsibilities--administrative and judicial--placed him squarely at the political centre of gravity. As the pivotal figure in the Privy Council, Star Chamber, and Chancery, Bacon was the supreme arbiter of royal policy, though his personal influence with James I remained surprisingly tenuous. Undoubtedly he saw himself as a reformer; his maiden speech in Chancery offered a detailed blueprint for curtailing "excesses" both in the patents which came to the great seal and in the proceedings in the court of Chancery. The question was whether such a programme--much of it the legacy of his predecessor--had any real hope of success. In fact, the targeted excesses were part and parcel of the administrative structure of the state.

Thus, for example, efforts to cure bureaucratic ills in the court of Chancery by the erection of new offices by patent met with determined opposition from established office-holders, whose livelihood was threatened. Fees were excessive from the litigants' standpoint, yet they constituted the officials' only legitimate source of income and were therefore a built-in obstacle to reform. The related problems of plurality of office and extortion by subordinates reflected the basic

malaise. While Bacon's attempt to rationalise the fee-structure of the Masters in Chancery was viewed with suspicion in Parliament--Coke pointed out the obvious danger in allowing fees for judicial reports--there plainly was an urgent need for some new arrangement. The point was that, in terms of procedure, "excess" was for all intents and purposes institutionalised in Chancery and Bacon's intervention was inevitably self-defeating.

Similarly, patents of monopoly and privilege, serving at once as a means to remunerate royal servants and a framework by which the deficiencies of Jacobean administrative machinery might be supplied, were a justifiable, perhaps unavoidable, adjunct to royal government. Unfortunately for Bacon, the claims of the patentees to provide such necessary services--regulating activities in the marketplace, supplementing the authority of local jurisdictions, seeking out and enforcing the king's interest--proved to be cynical excuses for plunder. Serious doubts were raised as to the legality of the patents in design and execution. As with the issue of Chancery reform, it was most obviously a question of the nexus of private and public interests by which the country was governed which immeasurably complicated the problem.

It is this theme which Bacon's fall, however remarkable as a political event, best serves to illuminate. Without the immediate issue of his corruption as a judge, it is unlikely that Parliament could have brought him down in 1621, yet his pivotal rôle in the central administration made him the natural focus of discontent with Jacobean government.

If this discontent, harnessed and transformed by a formidable Commons leadership, finally overwhelmed Bacon, his destruction reflected the large failing in the fabric of early Stuart institutions.

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